SUPREME COURT OF THE UNITED STATES

No. 245.

THE CITY OF SAN ANTONIO, PLAINTIFF IN ERROR,

vs.

J. C. BARNES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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a UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin, in said district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between J. C. Barnes, who is plaintiff, and The City of San Antonio, who is defendants, No. 1171, on the docket of said circuit court of the United States, sitting at Austin, in said district, a manifest error hath happened to the great damage of the said City of San Antonio, who is plaintiff in error herein, as by their complaint appears; we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next in said Supreme Court to be holden, and that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the U. States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five, and seal of our said circuit court at Austin, in the one hundredth year of the Independence of the United States.

[SEAL.]

M. HOPKINS,
Clerk of the Circuit Court of the United States, West. Dist. of Texas, at Austin.

Allowed by—

T. H. DUVAL,
U. S. Judge.

(Indorsed:) In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. J. C. Barnes, def'ts in error. Writ of error to Supreme Court of the United States. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k circuit court U. S., Austin.

b UNITED STATES OF AMERICA:

To J. C. Barnes or his att'ys of record, Waelder & Upson or A. M. Jackson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin, wherein The City of San Antonio is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] T. H. DUVAL,
U. S. Judge.

Test with seal of court at Austin, this 19th day of August, A. D. 1875.
M. HOPKINS, *Cl.*

Received in office August 19th, and executed August 20th, 1875, by delivery to A. M. Jackson, att'y of record of the defendant in error, a true copy of this citation in error.
Aug't 25th, 1875.

THOMAS F. PENNELL,
U. S. Marshal.

(Indorsed:) In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. J. C. Barnes, def't in error. Citation in error. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k.

1 Be it remembered that at a term of the circuit court of the United States, begun and held at Austin, in the western district of Texas, and fifth circuit, for the January term, A. D. 1875, among others the following proceedings were had, to wit:

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } No. 1171.

(Petition endorsed:) No. 1171. J. C. Barnes vs. City of San Antonio. Petition. Filed May 2d, 1871. M. Hopkins, clerk. Process issued May 3d, 1871. Service.

The petition is in words to wit:

In the circuit court of the United States for the western district of Texas.

UNITED STATES OF AMERICA,
Western District of Texas:

To the honorable Thomas H. Duval, and judges of the circuit court of the United States for said district:

The petition of J. C. Barnes, of the city, county, and State of New York, respectfully represents that the City of San Antonio, a citizen of the said State of Texas, and a body corporate and polictic, within the western district of the State of Texas, to wit, in the county of Bexar, duly incorporated by an act of the legislature of the State of Texas,
2 is justly indebted to your petitioner on one hundred and eighty obligations or negotiable instruments, commonly called "coupons," of thirty-five dollars each, with interest thereon at the rate of seven per centum per annum, from the days and dates when the same respectively became due and payable. Each of said coupons is substantially in the words and figures as follows, to wit:

CITY OF SAN ANTONIO BONDS.

Due from the City of San Antonio to bearer thirty-five dollars, for six months' interest due upon bond No. for $1,000.

C. F. KING, *Mayor.*

And the coupons herein sued upon became due and payable as follows, to wit:

Nine thereof on the first day of September, 1861; nine on the first day of March, 1862; nine on the first day of September, 1862; nine on the first day of March, 1863; nine on the first day of September, 1863; nine on the first day of March, 1864; nine on the first day of September, 1864; nine on the first day of March, 1865; nine on the first day of September, 1865; nine on the first day of March, 1866; nine on the first day of September, 1866; nine on the first day of March, 1867; nine on the first day of September, 1867; nine on the first day of
3 March, 1868; nine on the first day of September, 1868; nine on the first day of March, 1869; nine on the first day of September, 1869; nine on the first day of March, 1870; nine on the first day of September, 1870; nine on the first day of March, 1871.

All of which will appear from the face of said coupons, and they will be exhibited on the trial of this cause. Said coupons were made, executed, and delivered on or about the first day of March, 1852, at said Bexar County, by the said City of San Antonio through C. A. King, then its duly elected, qualified, and acting mayor, to the San Antonio and Mexican Gulf Railroad, also a body corporate and politic of the same county and State, by authority of and in accordance with "An act to incorporate the San Antonio and Mexican Gulf Railroad," passed by the legislature of the State of Texas, and approved September 5, 1850.

Before said coupons or any part thereof became due and payable, they were for a valuable consideration duly negotiated to, purchased by, and are now the property of your petitioner. Said coupons were made, executed, and delivered, as aforesaid, for the semi-annual interest
4 to become due on nine seven per cent. bonds of one thousand dollars each, said bonds being numbered 17, 18, 19, 20, 21, 22, 25, 26, & 27; and they the said bonds were made, executed, and delivered by said City of San Antonio at the time and place and to the parties aforesaid, and by the authority of and in accordance with the act of the legislature aforesaid, and the coupons herein sued upon were due and payable on the days herein before stated, and amount in the aggregate to the sum of six thousand three hundred dollars, exclusive of the interest due upon each.

Your petitioner further represents that said City of San Antonio has wholly failed and refused to pay the amount due upon said coupons or any part thereof, though often requested so to do, and still refuses to make payment, and the same, with the interest due upon each, remain wholly unpaid and due to your petitioner.

Wherefore petitioner brings this suit and prays that the said City of San Antonio may be cited by due service on the mayor thereof to appear at the next term of your honorable court to be holden in and for the said western district, then and there to answer this petition, that upon
a hearing of this cause petitioner have judgment against the said
5 city for the said sum of six thousand three hundred dollars with interest, at the rate aforesaid, upon each of said coupons from and after the date of maturity of each. Petitioner also prays for all costs herein as well as for general relief, and all such orders, judgments, and decrees as his case demands, and he will ever pray, &c.

WAELDER & UPSON,
Attorneys for Petitioner.

Citation.

And afterwards citation issued in due form endorsed: Issued 3d day of May, 1871.

The marshal's return is endorsed on the citation:

Received in office 6th of May, 1871; executed on the 6th day of May, 1871, by handing to the within-named defendant by its mayor, W. C. A. Thielepape, a true copy of this writ and a copy of the petition attached, both certified to by the clerk of the court under the seal of the court.

THOS. F. PURNELL, *U. S. M.*
By A. W. KEMPTON, *Deputy U. S. M.*

Answer.

And afterwards the defendant filed the following answer (endorsed: No. 1171, L. J. C. Barnes, pl'ffs., vs. City of San Antonio, def't. In circuit court of the U. S., western district of Texas. Filed July 10, 1871. M. Hopkins, cl'k), in words, to wit:

In the circuit court of the United States for the western district of Texas, at Austin.

J. C. BARNES, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1171. Law.

6 Now comes the City of San Antonio, the defendant in the above entitled and numbered suit, by its attorneys, and by way of answer unto the petition of J. C. Barnes, the plaintiff therein, it first demurs thereto, and says that the same is insufficient in law. And said defendant assigns the following special causes of demurrer, to wit:

First. Because it does not appear from said petition that said defendant had the constitutional power to issue bonds and coupons for the benefit of a private corporation, or for any other than a public purpose, and to levy and collect a tax to pay the same.

Second. Because it appears that the act of the legislature in said petition described by its title, in so far as it sought to authorize the issuance of bonds, &c., by defendant, was unconstitutional, null, and void from the beginning, and that it so remains.

Third. Because it does not appear from said petition that the corporate seal of defendant was ever impressed upon the pretended bonds and coupons, or upon any of them, in said petition mentioned; nor that said pretended bonds were even impressed with any seal.

Fourth. Because it does not appear from said petition that the
7 pretended railroad therein mentioned was duly incorporated, and had user; nor, on the other hand, that the conditions precedent to the issuance of bonds, &c., by defendant have ever been complied with.

Fifth. Because of other causes apparent upon the face of said petition, wherefore, &c., &c. And by way of further answer unto said petition, defendant denies all and singular the allegations therein contained.

And by way of further answer unto said petition, defendant says that each of the several pretended bonds, and each of the several pretended coupons therein mentioned, was not made by defendant, or by any person or persons by defendant lawfully authorized, and is not the act and deed of defendant; all of which defendant is ready to verify. Wherefore, &c.

DAVIS & MURPHY and WM. ALEXANDER,
For Defendants.

This affiant, William Alexander, one of the [illegible] defendant in the above entitled and numbered cause, being [illegible] makes oath, and says that he has been informed, and [illegible] that each of the pretended bonds mentioned in the petition of the
8 plaintiff therein was never sealed with the corporate seal, or with any other seal, of defendant, and that each of said pretended bonds, as well as each of the pretended coupons sued upon, was not made by, and is not the act and deed of, defendant, or of any person or persons by defendant lawfully authorized. And further affiant saith not.

WILLIAM ALEXANDER.

Subscribed and sworn to before me this 10th day of July, A. D. 1871.

M. HOPKINS, *Clerk.*

And afterwards, at the January term, 1872, of said court, the defendants, by their counsel, filed the following motion (endorsed: No. 1171. J. C. Barnes *vs.* City of San Antonio. Motion to correct mistake in plea in bar, &c. Filed February 10, 1872. M. Hopkins, clerk), and in words, to wit:

Motion to correct error in plea in bar.

In the circuit court of the United States, for the western district of Texas.

J. C. BARNES, PLAINTIFF
vs.
THE CITY OF SAN ANTONIO, DEFENDANT.

Comes the defendant in this case, by attorneys, and asks leave of the court to correct the style of a case referred to in plea in bar, and answer filed May 6th, 1872, by inserting in the place of the name of J. C. Barnes, erroneously inserted, the true name in the case referred to, to wit, R. S. Gould; and of this, &c.

DAVIS AND MURPHY, & WILLIAM ALEXANDER,
For Defendant.

9 And on the same day, towit, Feb. 10, 1872, the following entry appears upon the minutes of the court:

SATURDAY, *Feb.* 10, 1872.

J. C. BARNES
vs.
THE CITY OF SAN ANTONIO. } 1171.

On this day came the parties, by their attorneys, and on motion leave was given both to plaintiff and defendant to amend their pleadings herein, and the case was continued on motion of defendant.

And afterwards, to wit, May 2, 1872, pl'ff filed the following amended petition (endorsed: No. 1171. J. C. Barnes *vs.* City of San Antonio. Amended petition. Filed May 2, 1872. M. Hopkins, clerk), and in words, to wit:

Amended petition.

In the circuit court of the United States for the western district of Texas. No. 1171.

J. C. BARNES
vs.
CITY OF SAN ANTONIO.

Now comes the plaintiff in the above-entitled cause, and leave of court, by way of replication to the defendant's answer, and as amendatory of his petition, says that the said defendant, at the time of the execution and issuance of the coupons herein sued upon, was not authorized by its charter to have, and did not have at that time, a corporate seal, and that the said coupons and bonds to which they were attached were not impressed with a corporate or other seal, for the reason that the said city did not then have or use such seal.

Wherefore plaintiff prays for judgment as in his orriginal petition.

A. M. JACKSON,
WAELDER & UPSON,
Att'ys for Pl'ff.

And afterwards, to wit, May 6th, 1872, the defendants, by their attorneys, filed the following pleas, to wit:

First plea (endorsed to wit: No. 1171. Law. J. C. Barnes, plaintiff, vs. City of San Antonio, defendant. In circuit court U. S., western district of Texas. Answer of def't. Filed May 6, 1872. M. Hopkins, cl'k), in words to wit:

Answer.

In circuit court of the United States for the western district of Texas, at Austin.

J. C. BARNES, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1171. Law.

Now comes the City of San Antonio, the defendant in the above entitled and numbered suit, by its attorneys, and by way of answer unto the petition of J. C. Barnes, the plaintiff, it first demurs thereto, and says that the same is insufficient in law, and said defendant assigns the following special causes of demurrer, to wit:

First. Because it does not appear from said petition that said defendant had the constitutional power to issue bonds and coupons for the benefit of a private corporation, or for any other that a public purpose, and to levy and collect a tax to pay the same.

Second. Because it appears that the act of the legislature in said petition described by its title, in so far as it sought to authorize the issuance of bonds, &c., by defendant, was unconstitutional, null, and void from the beginning, and that it so remains.

Third. Because it does not appear from said petition that the corporate seal of defendant was ever impressed upon the pretended bonds and coupons, or upon any of them, in said petition mentioned, nor that said pretended bonds were ever impressed with any seal.

Fourth. Because it does not appear from said petition that the pretended railroad therein mentioned was duly [illegible], but on the other hand, that the conditions, provisions [illegible] bonds, &c., by defendant have ever been complied with.

12 Fifth. Because of other causes apparent upon the face of said petition, wherefore, &c., &c. And by way of further answer unto said petition, defendant denies all and singular the allegations therein contained.

And by way of further answer unto said petition, defendant says that each of the several pretended bonds and each of the several pretended coupons therein mentioned were not made by defendant, or by any person or persons by defendant lawfully authorized, and is not the act and deed of defendant; all of which defendant is ready to verify. Wherefore, &c.

DAVIS & MURPHY,
& W'M ALEXANDER,
Att'y for Def't.

This affiant, by S. G. Newton, mayor of the city of San Antonio, in behalf of said city, being duly sworn, makes oath and says that he has been informed and that he verily believes that each of the pretended bonds mentioned in the petition of the plaintiff therein was never sealed with the corporate seal of defendant, and that each of said pretended bonds, as well as such of the pretended coupons sued upon, was

13 not made by and is not the act and deed of defendant, or of any person or persons by defendant lawfully authorized. And further affiant saith not.

S. G. NEWTON,
Mayor of the City of San Antonio, Texas.

Sworn to and subscribed before me this 3rd day of May, A. D. 1872.
[L. S.] A. L. McLANE,
U. S. Commissioner.

On the same day plea in bar and answer is (endorsed to wit: No. 1171. J. C. Barnes v. The City of San Antonio. Plea in bar & answer. Filed May 6th, 1872. M. Hopkins, clerk. Davis & Murphy, & Alexander, for def't) in words to wit:

In the circuit court of the United States for the western district of Texas, at Austin.

J. C. BARNES, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1171.

NOTE BY CLERK.—See (ante) motion to correct error and insert R. S. Gould in place of J. C. Barnes.

Now comes the City of San Antonio, defendant in the above entitled and numbered suit, and for further answer and for plea in bar to said suit says that the subject-matter of said suit, and the claim and

14 demand therein set up, are already res adjudicata, the same having been already decided adversely to said plaintiff in suit No. 301 in the supreme court of the State of Texas, in the suit entitled therein "City of San Antonio, appellant, vs. J. C. Barnes, appellee," the said

supreme court of Texas having jurisdiction under the laws of said State of the parties and subject-matter of said last-mentioned suit No. 301.

That in said suit No. 301, in the supreme court of said State, the validity of the bonds on which the coupons sued on herein are based came in question, and same were decided by said supreme court to be invalid and not binding upon the said city of San Antonio, and that the coupons for interest on said bonds were invalid and formed no cause of action against said city.

That the pretended cause of action in said suit No. 301 was certain coupons for interest on the same bonds which are mentioned and described in this suit. And for further answer defendant avers that said coupons, and the bonds to which they were attached, were issued and delivered by said King without any consideration having been
15 received then or at any time before or since by defendant for or on account of the same, all of which was well known to the parties to whom the same were issued and delivered at the time they were delivered, and were also known to the plaintiff at and before the time he received said coupons mentioned in his petition. And defendant further avers that plaintiff received said coupons from the parties to whom they were issued without having paid any valuable consideration for the same; all of which def't is ready to verify. Whereupon he prays judgment, &c.

DAVIS AND MURPHY,
And W'M ALEXANDER,
For Def't.

S. G. Newton, mayor of the city of San Antonio, in behalf of the said city, maketh oath and saith that the foregoing answer and pleas in bar are true in substance and in fact.

S. G. NEWTON,
Mayor of the City of San Antonio, Texas.

Sworn to and subscribed before me this 3rd day of May, 1872.
[L. S.] A. L. McLANE,
U. S. Commissioner, W. D. T.

And afterwards the following plea in abatement was filed (endorsed in words to wit: 1171. Law. J. C. Barnes v. The City of San
16 Antonio. Plea in abatement, demurrer, answer, & notice of def't. Filed May 6, 1872. M. Hopkins, clerk), in words to wit:

Plea in abatement, demurrer, answer, & notice of def't.

In the circuit court of the United States for the western district of Texas, at Austin. June term, A. D. 1872.

J. C. BARNES, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } Law. No. 1171.

And the City of San Antonio, the defendant in the above entitled and numbered cause, and defends the wrong and injury, &c., and says that the pretended coupons in the petition of the plaintiff described and sued on, which are therein alleged to have been attached to certain bonds of defendant, payable to the San Antonio and Mexican Gulf Railroad, or bearer, were in fact executed to said railroad company, and to no other

person or persons, whether natural or artificial, and that said company was then chartered by the State of Texas, and by no other State, and that each of the several persons claiming to be copartners thereof was then a citizen of said State of Texas, and a resident thereof, and of no other State, as will appear from an act entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad Company," approved
17 September 5, 1850, by virtue of section 12 of which act, and of no other authority, said pretended bonds and coupons were executed. Wherefore, because defendant and said company were citizens of said State as aforesaid, defendant prays judgment if this court ought to take jurisdiction of said cause, and that the same be abated, &c.

DAVIS & MURPHY,
and W'M ALEXANDER,
For Def't.

S. G. Newton, mayor of the city of San Antonio, in behalf of said city, maketh oath and saith that the foregoing plea in abatement to the jurisdiction is true in substance and in fact.

S. G. NEWTON,
Mayor of the City of San Antonio.

Sworn to and subscribed before me this 3d day of May, A. D. 1872.
[L. S.] A. L. McLANE,
U. S. Commissioner.

And now comes the defendant to the above entitled and numbered cause, and without waiving the foregoing plea, by way of answer to the petition of the plaintiff, first demurs thereto, and says that the same is insufficient in law, and defendant assigns the following causes in support of said demurrer:

18 First. Because it does not appear from said petition, nor from anything therein contained, that the pretended bonds therein described, and to which it is therein alleged that the pretended coupons sued on were attached, were under the corporate seal of defendant, or under any seal, or were ever delivered, nor to whom they were delivered.

Second. Because it does not appear as aforesaid that said pretended bonds and said pretended coupons were made by the mayor and aldermen of the city of San Antonio "in pursuance of the provisions of section 12 of an act entitled 'An act to incorporate the San Antonio railroad company,' approved September 5, 1850," or were made in conformity with any law or laws of Texas whatever.

Third. Because it does not appear as aforesaid that said railroad or railroad company ever organized and had uses as a corporation under the act aforesaid, or under any law or laws of the State of Texas.

Fourth. Because it does not appear as aforesaid that the pretended bonds aforesaid were not redeemed and fully paid at some date
19 after the first day of March, A. D. 1852, or at some other time before the date of the filing of said petition.

Fifth. Because it does not appear as aforesaid that the consideration provided for by section 12 of the act aforesaid was ever subscribed for or was ever received; nor yet that any consideration deemed valu'ble in law was ever paid or was ever received for said pretended bonds, said pretended coupons being incident thereto.

Sixth. Because it does not appear as aforesaid that said pretended coupons were ever presented for payment and that payment ever was demanded thereof.

Seventh. Because it does not appear as aforesaid that the issuance of the pretended bonds and coupons was not without and beyond the scope of the authority of defendant as a city corporation under the laws of the State of Texas.

Eight'. Because it does not appear as aforesaid that under the constitution and laws of the State of Tex., in due course of trade, and for a valu'ble or for any consideration, said defendant could, on the 1st day of December, 1869, or on any other date, have executed and delivered to the plaintiff the pretended coupons sued upon. And it further
20 does not appear from said petition, which alleges that said pretended bonds were made on the first day of March, 1852, that the allegations touching the execution and delivery of said pretended coupons are, or by any possibility can be, true.

Ninth. Because it does not appear as aforesaid petition discloses any cause of action.

Tenth. Because of other causes apparent on the face of said petition.

And defendant, without waiving the foregoing plea and the foregoing demurrer, by way of further answer to said petition, denies all and singular the allegations therein contained.

And defendant, by way of further answer, says that said pretended bonds and said pretended coupons were never made in conformity with section 12 of the act aforesaid, or in accordance with any law or laws of the State o. Texas, by the mayor and aldermen of the city of San Antonio, "but were made and issued in fraud and were, with full notice, both actual and constructive, so received, and that said pretended coupons sued upon were so issued, and were so received by plaintiff, who, when he acquired the same, had full notice as aforesaid that they were null, void, and not binding upon defendant, because the' were made in fraude of law, and were obtained in fraud of law.

21 And defendant, by way of further answer, says that said pretended coupons sued upon have never been presented, and that payment thereof has never been demanded on the first days of March and September of the years in which they are alleged in said petition to have respectively become due, or at any other time or times, by plaintiff, "at the office of the treasurer of the city of San Antonio," in accordance with the terms of said pretended bonds, and that no tender to surrender the same has ever been made in accordance with the terms of said pretended bonds.

And defendant, by way of further answer, says that defendant has been and is a city corporation, duly organized, and having uses for municipal purposes, and for such only duly authorized to act within and not without the scope of its authority; and that being such, and being so authorized, it could not and did not issue the pretended bonds and coupons in the petition described in conformity with the constitution and any law or laws of the State of Texas; all of which was well known to plaintiff, and all of which he had due notice, both actual and constructive, before and at the time at which it is alleged in said
22 petition he obtained the pretended coupons sued upon, and that plaintiff, having knowledge and notice as aforesaid, obtained said pretended coupons in fraud and with the intent to, by means thereof, wrong and defraud defendant out of the respective sums of money specified therein, together with the interest thereon.

And by way of further answer defendant says that said pretended bonds and said pretended coupons in the petition mentioned and described are not the act and deed, and were not executed and delivered by defendant, but, on the contrary, that said pretended bonds are not

alleged in said petition to have been sealed, and, in fact, were not sealed; and said pretended coupons sued on appear of record not to have been executed in any manner by defendant, but to have been signed by one "O. F. King," who added the word "mayor" to his signature, thereby making said word descriptio personæ merely.

And defendant, by way of further answer, says that said railroad company, which never was organized and never had vitality as a corporation according to law, forfeited such corporate rights as it might have obtained under its charter while in possession of and claiming title to the pretended coupons, and upon and before the same or any part thereof had been delivered or in any manner transferred to plaintiff, all of which said plaintiff had full notice, both actual and constructive, prior to his obtaining possession of and claiming to have title to said pretended coupons, and that by reason of said facts said plaintiff did not obtain, has not now, and cannot obtain, title to said pretended coupons, and is not the owner thereof.

23

And by way of further answer defendant says that said pretended bonds and said pretended coupons attached to and incident thereto were obtained in fraud of law on the first day of March, A. D. 1852, and that said pretended bonds do not contain any contract-words showing when the same are payable, are not under seal, or scroll in lieu thereof, and are barred by the statute of limitations; all of which will appear from an inspection thereof, or of any of the pretended bonds of like issue.

And by way of further answer defendant says that said pretended bonds and said pretended coupons incident thereto as aforesaid, together with all other pretended bonds of like issue, do not on the face thereof purport to be bonds, but amount only to certificates made by said King and one P. S. Buquor, and not by the mayor and aldermen of the city of San Antonio, contain no definite contract-words, recite no consideration whatever, and are not under seal, or scroll in lieu thereof; all of which will more fully appear from an inspection thereof, or of any of the pretended bonds of like issue, and are on the face thereof null, void, and of none effect.

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DAVIS AND MURPHY &
W'M ALEXANDER,
For Def't.

To the plaintiff in the above entitled and numbered cause and to his attorney of record:

GENTLEMEN: You will please to take notice that you are required to produce and deposit with the clerk of this court, subject to the inspection of the undersigned before the calling of this cause for trial, the pretended bonds and coupons in the petition of plaintiff referred to; and that in case of your failure so to do that defendant will offer in evidence other pretended bonds and coupons of like issue to prove the words and signature thereof.

Yours, &c.,

DAVIS & MURPHY &
W'M ALEXANDER,
Att's for Def't.

And afterwards, to wit, May 6th, notice was given to plaintiff in accordance with the notice appended to the last paper, as follows:

To the plaintiff in the above entitled and numbered cause and to his att'y of record:

25 GENTLEMEN: You will please take notice that you are required to produce and deposit with the clerk of this court, subject to the inspection of the undersigned before the calling of this cause for trial, the pretended bonds and coupons in the petition of plaintiff referred to; and that in case of your failure so to do that defendant will offer in evidence other pretended bonds and coupons of like issue to prove the words and signature thereof.

Yours, &c.,

DAVIS & MURPHY AND
WILLIAM ALEXANDER,
Att'ys For Def't.

And thereupon the clerk accompanied the copy of notice as above with the following order for service, endorsed: 1171. Circuit court, Austin.

Order to serve notice on att'y of record, A. M. Jackson, Esqr.

J. C. BARNES, PL'FF,
v.
CITY OF SAN ANTONIO.

In the circuit court of the United States in and for the western district of Texas, at Austin.

UNITED STATES OF AMERICA,
Western District of Texas:

To the marshal of the western district of Texas, greeting:

You are hereby commanded to serve accompanying copies of notice upon A. M. Jackson, esq., one of the att'ys of record in case No.
26 1171, J. C. Barnes, plaintiff, vs. The City of San Antonio, and make due return showing how you have executed this order.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States and seal of our said circuit court, at Austin, this 6th May, A. D. 1872.

[L. S.] M. HOPKINS, *Clerk.*

The marshal's return is endorsed on the same in words, to wit:

Came to hand May 6th, 1872, and executed this May 7th, by handing to A. M. Jackson, esq., the within-named copies of notice as herein commanded.

THO'S F. PURNELL,
U. S. Marshal, W. D. Texas.
Per JOHN H. TRAYNHAM,
Acting Deputy.

And afterwards, to wit, June 26, 1872, the following entry appears upon the minutes of the court:

JUNE 26, 1872.

J. C. BARNES
vs. } No. 1171.
CITY SAN ANTONIO.

R. S. Gould
vs.
City of San Antonio. } No. 1172.

Cont'd generally.

And afterwards, to wit, January term, 1873, the following entry appears upon the minutes of the court, to wit:

J. C. Barnes
vs.
City of San Antonio. } No. 1171.

Continued by the court.

27 And afterwards, at the June term, A. D. 1873, the following entry appears upon the minutes of the court:

J. C. Barnes
vs.
The City of San Antonio. } No. 1171.

Ordered to be continued.

And afterwards, to wit, on January term, 1874, the following entry appears upon the minutes of the court, to wit:

J. C. Barnes
vs.
City of San Antonio. } No. 1171.

Continued by agreement.

And afterwards, on June 8th, 1874, the following entry appears upon the minutes of the court, to wit:

J. C. Barnes
vs.
City of San Antonio. } No. 1171.

Continued by consent.

And afterwards, on the January term, A. D. 1875, the following waiver of jury was filed (endorsed, to wit: No. 1171, J. C. Barnes vs. City of San Antonio. Waiver of jury. Filed Feb'y 5, 1875. M. Hopkins, clerk), in words, to wit:

Waiver of Jury.

In the C. C. of the U. S., western district of Texas.

J. C. Barnes
vs.
City of San Antonio. } No. 1171.

In this case the parties, by their attorneys, being present in court, waive a jury and submit the case to the court alone.

Austin, February 5th, 1874.

DAVIS & BRITTON,
For Def't.

WALDER AND UPSON,
For Pl'f.

28, 29 And on the same day the following entry appears upon the minutes of the court, to wit:

Entry.

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } No. 1171.

On this day came the parties, the pl'ff by Walder & Upson & A. M. Jackson, and the defendant by Davis and Britton, and the case was submitted to the court on the law and the facts, to abide the decision in the case of Mehaffy v. The Corporation of the City of San Antonio, without argument.

And afterwards, on the 8th day of Feb'y, 1875, the following entry appears upon the minutes of Monday, February 8th, 1875.

J. C. BARNES
vs.
THE CITY OF SAN ANTONIO. } No. 1171.

This day came the parties, by their attorneys, and having filed a written stipulation waiving a trial by jury, submit this cause to this court upon the issues of fact as well as of law.

Judgment.

And the court having considered the demurrers of the defendant to the declaration of plaintiff, is of opinion that said demurre's are not well taken, and it is therefore adjudged that the same be and they are hereby overruled; and the court having heard the evidence and argument of counsel upon the issue of fact presented by the pleadings finds said issue for the plaintiff and assess' the damages of the plaintiff by reason of the premises, to wit:

Principal of 180 coupons @ $35.00	$6, 300 00
Interest on 180 coupons	3, 822 00
Total	$10, 122 00

30 Ten thousand one hundred and twenty-two dollars.

Therefore, it is considered by the court that the plaintiff recover of the defendant the said sum of ten thousand one hundred and twenty-two dollars, his damages aforesaid, in the form aforesaid assessed, and also his costs in this behalf expended, to be taxed by the clerk. Ordered, that defendant pay its own costs herein, for all of which execution may issue.

The opinion of the court is in words, to wit:

31 NOTE BY THE CLERK.—By agreement of parties, this cause was to abide the opinion of the court delivered in case 1139, Thomas J. Mahaffy vs. The City of San Antonio, & to be used in this cause so far as the same would apply, and was thus used.

M. HOPKINS, *Clerk.*

Woods, circuit judge, delivered the opinion of the court.

This action is brought upon 2 bonds, purporting to be issued by the city of San Antonio, Texas, and upon the 40 certified coupons attached to each of said bonds.

The bonds are identical, same in No., and the coupons same in number and date of maturity.

The following is a copy of one of the bonds:

THE STATE OF TEXAS, CITY OF SAN ANTONIO SEVEN PER CENT. BOND.

$1000.] [illegible

This is to certify that the corporation of the city of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer, in the sum of one thousand dollars, redeemable after the first day of March, 1872, with interest at seven per centum per annum, payable semi-annually, on the first day of March and September in each year, at the office of the treasurer of the city of San Antonio, on presentation and surrender of the proper coupon hereto annexed.

This debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provisions of an act to incorporate the San Antonio & Mexican Gulf Railroad Company, approved Sept. 5, 1850. Entered and recorded in the office of the city treasurer, and is transferable on delivery. City Hall, city of San Antonio, March 1, 1852.

32

C. F. KING,
Mayor.

P. L. BUQUOR,
Secretary city of San Antonio.

The following is a copy of one of the coupons:

36.] CITY OF SAN ANTONIO BONDS. [36.

Due from the city of San Antonio, to bearer, thirty-five dollars, for six months' interest, due March 1, 1870, upon bond No. 3, for $1000.

C. F. KING, *Mayor.*

The plaintiff avers himself to be the holder and owner of the bonds and coupons, and that he acquired the same before the maturity of the bonds, for a valuable consideration, and prays judgment for the amount due thereon against the city of San Antonio.

Several grounds of defence are set up by the city of San Antonio, which will be noticed in their order.

1. It is alleged that the section of the law by authority of which the bonds were issued was not constitutionally enacted.

This objection is based upon an alleged defect in the title of the act.

33

Section 24 of article 7 of the Texas constitution of 1845 (1 Paschal's Digs., 67), which was in force at the time of the passage of the act, declares that "every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title."

The title of the act is as follows: "An act to incorporate the San Antonio Railroad Company."

The act contained the provisions usually found in acts creating rail-

road corporations, and the 12th section provided that the city of San Antonio might, upon a vote of the people in favor of the subscription, subscribe for not more than $50,000 of the stock in the railroad company, and might issue bonds in payment thereof. Like power was by the same section given to other municipal and political corporations along the line of the road.

It is claimed that the object of this section is different from the object to be attained by the other sections of the act, and that it is not expressed in the title. In other words, that the act has two objects, and that only one of them is expressed by the title.

The constitutionality of section 12 of the act under consideration has twice been passed upon by the supreme court of Texas. In
34 the case of San Antonio v. Lane, 32 Texas, 412, the 12th section was held not to be obnoxious to the clause of the constitution above cited, and to be a valid and binding enactment. In the case of San Antonio v. Gould, in 34 Texas, 49, the precisely opposite view was held, and the 12th section declared to be unconstitutional, null, and void.

We do not feel bound to follow this last decision merely because it is the last. "It is the rule of the United States courts to follow the latest settled adjudications of a State court, involving the construction of a State law or constitution. But it cannot be expected that the U. S. courts will follow every oscillation of opinion, from whatever cause arrising, that may pos'ibly occur." Gelpcke v. Dubuque (1 Wall., 205.) We feel therefore at liberty to follow either one of these decisions, as shall seem to our judgment most sound.

The question in controversy is not free from doubt, and because it is not free from doubt we feel it to be our duty to follow the first adjudication, and hold the section to be constitutional. We are also of opinion that the weight of argument is with the court which sustained
35 the section. We therefore hold that the objection to the validity of the bonds, founded on the unconstitutionality of the 12th section of the act of Sep. 5, 1850, must be overruled.

2. It is claimed that the bonds were without consideration, and therefore void, and that plaintiff had notice of the fact before he received the bonds.

We think the proof fails to show that the plaintiff had notice of any want of consideration in the bonds before he acquired them, even if such want of consideration actually existed.

But we are also of opinion that the proof establishes the fact that the bonds were issued for a good and sufficient consideration, which has not failed.

The evidence shows that on Dec. 5, 1850, the question whether the city of San Antonio should subscribe to the capital stock of the railroad company was submitted to a vote of the electors of the city; that a large majority of those voting voted for the subscription; that on the 24th day of February, 1851, the city council passed an ordinance directing the mayor to subscribe $50,000 to the capital stock of the railroad company; that the stock was accordingly subscribed; that the
36 mayor voted upon the stock of the city at meeting of the stockholders, and that the city was recognized by the railroad company as the owner of the $50,000 of stock subscribed by it.

The evidence further shows that on the 26th of April, 1851, the city council passed a resolution directing the mayor to issue to the railroad company the bonds of the city in payment of the stock so subscribed.

The evidence further shows that it was in payment of the stock thus

subscribed that the bonds of the city were issued and delivered to the railroad company. How it can be claimed that the bonds were without consideration we are unable to comprehend. The city got the stock in the railroad company, and in payment therefor issued its bonds to the company. There is not one word of evidence that the city ever surrendered the stock or reconveyed it to the railroad company, or that it does not hold it to this day. The city may have made a bad bargain, the stock may have proved worthless, but it got precisely what it bargained for, and it cannot say that it received no consideration. The affairs of the railroad company may have been badly managed, and other reasons may have conspired to defeat the enterprise, but
37 that is no reason why the city of San Antonio should not pay for the stock which it subscribed for and got.

3. It is further objected to a recovery that at the time when the bonds were issued, to wit, on March 1, 1852, the railroad company had forfeited its charter and therefore had no existence. The inference sought to be drawn from this fact is that the bonds issued to the company by the city of San Antonio were void.

The 18th section of the act by which the railroad company was incorporated declares as follows: "If said railway is not commenced within one year from the first of November, 1850, and if at least 20 miles are not in running order within three years from its commencement, then the charter shall be null and void."

It is shown by the proof that no bona-fide commencement of work on the railway was made within one year from the first of November, 1850. It is therefore claimed that when the bonds were issued on March 1, 1852, the company had forfeited its charter and no valid bonds could be issued to it.

38 In reply to this position, it is obvious to remark that when the city made its subscription of stock there was no question about the continued existence of the charter of the railroad company. The year within which the company was by its charter to commence work had not elapsed. The city subscribed $50,000 stock in a subsisting corporation. It was bound by its contract to issue its bonds for a like amount in payment of the stock. It actually did issue its bonds for that purpose, payable to the railroad company or bearer, and delivered them to the officers of the railroad company.

The fact, if it be a fact, that the company had forfeited its charter did not cancel the debt due from the city of San Antonio, nor render the bonds issued in payment of the debt void. Any creditor of the company might have enforced the payment of the debt due from the city for the stock.

But we are by no means of opinion that the railroad company was defunct at the date of the issue of the bonds because it had failed to commence the work of construction within one year from November 1st, 1850.

39 On the 14th of February, 1852, before the bonds were issued, the legislature passed an act extending the time for the commencement of work upon the railroad for two years from date of the act. The continued existence of the railroad company as a corporate body was thus recognized by the legislature, and any forfeiture of its charter for failure to commence work within a year after November 1st, 1850, was waived by legislative authority.

We have no doubt, therefore, that on March 1, 1852, when the bonds were issued, the railway company was a subsisting corporate body.

It has been urged that the act of Feb. 14th, 1852, extending the

time for the commencement of work by the R. R. Co., made a radical change in the charter of the company, and that a vote of the citizens of San Antonio, to issue bonds to a railroad company which was bound by its charter to commence work in one year, does not justify the issue of bonds to a company which is allowed three years in which to commence work.

To sustain this view, the case of Mark v. Fulton county (10 Wall., 687) is cited. In that case it was held that a subscription of
40 stock and issue of county bonds authorized upon a vote of the people of the county to an original corporation, could not be legally made to one of three new corporations organized in the place of the original corporation.

In that case the question submitted to the vote of the people was, whether the stock should be subscribed in a certain specific company, and, also, whether bonds should be issued to pay for the stock so subscribed.

In the case now under consideration, the single question which the law authorized to be submitted to the voters, and the only question which as the proof shows was submitted, was whether the city of San Antonio should subscribe stock to an amount not exceeding $50,000, in the San Antonio and Mexican Gulf Railroad Company. The vote was in the affirmative. Within a few weeks after the vote, and before there could have been any default on the part of the railroad company, when its charter was conceded to be of full force, the subscription was made.

The authority given by the vote of the people was strictly followed, and it was not exceeded a hair's breadth.

41 In the case of Mark v. Fulton County, supra, it was held that the bonds were void, because the people had voted to take stock and issue bonds to pay for it in one company and the stock had been subscribed in another, and therefore the bonds to pay for it were issued without authority.

But here the vote was simply to subscribe for stock. The authority conferred by the vote was strictly followed. The assumption that because after the subscription of the stock the railroad company failed to comply with the provisions of its charter, by which its charter was forfeited, therefore the bonds issued after such failure, to pay for the stock which had been bought by the city of San Antonio were void, is not bourne out by the case of Mark v. Fulton County.

The claim that the failure of the company to commence work upon its road within one year worked a forfeiture of its charter, so as to release a subscriber of stock from payment, was directly made and overruled in the case of San Antonio v. Jones, decided by the supreme court of Texas in 28th Texas, 32.

In that case, Moore, C. J., says: "We cannot give our assent to this construction of the charter. The provision is not believed to
42 have been intended by the subscribers of stock as part of the essence of the contract among themselves in organizing the corporation, nor as a matter of contract between the individual subscribers and the corporation as an aggregate body.

It was doubtless intended by the legislature, and understood by the subscribers, as a reservation and condition attached for the benefit of the public, to secure the speedy construction of an important public work, for the promotion of which many essential and valuable rights had been conceded. It was to protect the State from any future embarrassment by reason of the privileges conferred upon this company, if the road should not be speedily and in good faith commenced and pushed

forward to completion. The construction contended for by appellant would enable a discontented subscriber of stock by withholding the means upon which the company is dependent to perform the requirements of its charter, if not to insure its destruction, to escape at least from many liabilities which he had assumed by becoming a member of it."

We think, therefore, that the position that the bonds were void
43 because as the railroad company had, as it was supposed, forfeited its charter before the bonds were issued, cannot be maintained.

4. It is claimed that the bonds issued in payment of the stock subscribed for by the city of San Antonio were without seal, and therefore void.

The pleadings aver and the proof shows that when the bonds were issued the city had and used no common seal.

The execution of the bonds by the mayor and the secretary of the city council of San Antonio is abundantly proved. The resolution of the city council authorizing them to issue the bonds is also in evidence. The bonds were issued to pay for stock subscribed for, and the title to which was transferred to the city.

There is nothing in the evidence to show that the city does not hold the stock to this day.

Under these circumstances we think the city of San Antonio is equitably estopped from setting up the want of a seal to her obligations given in payment for property which she has held for more than 20 years, and still holds. Pendleton Co. v. Ames (13 Wall., 297).

5. It was alleged, and the attempt was made to show that a ma-
44 jority of the qualified electors did not vote in favor of the subscription by the city to the stock of the railroad company. We think the proof did not sustain the allegation. But even if it did, it could not affect a purchaser, without notice of the fact. Van Horthrup v. Madison City (1 Wallace, 297); Gelpcke v. Dubuque (1 Wall., 263); Moran v. Community of Mianni Co. (2 Black., 722); Mercer County v. Hackelt (1 Wall., 93).

We are clear that the mayor and secretary of San Antonio had authority to issue the bonds sued on. This point established, unless it can be shown that the present holder, the plaintiff, who, it is the presumption of law, acquired them before maturity, was not an innocent holder for value, his title to a recovery is complete.

In our opinion the evidence falls very short of showing that the plaintiff, a citizen of Virginia, was not a bona-fide holder for value. There is no evidence to bring notice to him of any infirmity in these bonds.

45 The City of San Antonio placed these bonds, payable to bearer, in the hands of this railroad company.

If there was a failure, or want of consideration, one half of the vigilence and ability which has been exerted to defeat a recovery on these bonds in the hands of an innocent holder, if applied at the right time, would have prevented the transfer of the bonds by the railroad company, and saved the city from any obligation to pay them. But the city having slept when it should have been wide awake to its interests, cannot now defend against the bonds in the hands of an innocent purchaser, even if it should be able to show that they were utterly without consideration.

But even this the def't has not been able to show.

We are of opinion, therefore, that there must be a finding and judgment for the plaintiff.

Duval, district judge, concurred.

46 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, do hereby certify that the foregoing and annexed pages contain a full, true, and correct copy of the opinion of the court in case No. 1139, entitled "Thomas J. Mehaffay vs. The Corporation of the City of San Antonio."

In testimony whereof I have hereunto set my hand and the impress of the seal of said court, at Austin, this 20th day of Feb'y, A. D. 1875.

[L. S.] M. HOPKINS,
Clerk.

And afterwards bills of exceptions Nos. 1, 2, 3, & 4 endorsed "Filed Feb. 15, 1875. M. Hopkins, cl'k."

Bill of exceptions Nos. 1 & 2 are in words, to wit:

Bill of exception No. 1.

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } Law. 1171.

Be it remembered that on the trial of the above-entitled cause, the plaintiff having offered in evidence the act entitled "An act to incorporate the San Antonio Railroad Company," approved Sept. 5th, 1850, whereupon the defendant objected to its admission because the same was unconstitutional, in so far as applicable to this suit, the same contravening sec. 24, art. 7, of the constitution of Texas, in the following respects:

1st. The name of the company in the title of the act differs from
47 the name of the company as incorporated in the body of the act.

2nd. Because the purposes of the 12th sec. of this act, which sec. is relied on to sustain this suit, are not embraced in the purposes set forth in the title.

Which objections of defendant were overruled by the court and the act admitted.

Whereupon defendant excepted, and now prays that her bill of exceptions be allowed, signed, and made a part of the record; which is accordingly done.

[SEAL.] W. B. WOODS,
Judge.

Bill of ex. No. 2.

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } Law. No. 1171.

Be it remembered that on the trial of the above-entitled cause, the plaintiff having offered in evidence the act of the legislature of the 14th day of Feb'y, 1852; that of Feb'y 13th, 1854; that of Feb'y 20th, 1856; that of Nov. 14th, 1857, the act to revive and continue up to the month of January, 1862, and the act of Feb'y 1st, 1861, said several acts being introduced to show that the act of 5th of Sept., 1850, though it had expired by limitation on account of failure to construct, was, in fact, revived by the above said mentioned acts, and that said
48 above mentioned acts revived the rights of the railroad company to the bonds in issue, and legalized their issue by the mayor of San Antonio.

Thereupon defendant objected to the admission of the said several acts, because—

1st. The two first of said several acts are unconstitutional, and violate sec. 24, art. 7, constitution of Texas, in the fact that the title of these acts speak of a railroad by the name of the San Antonio Railroad Company, while the body of the acts legislate for a company known as the San Antonio and Mexican Gulf Railroad Company.

2nd. That none of said acts do, in fact, revive or pretend to revive the authority of the city corporation to issue the bonds in question, such authority having expired, if it ever existed, under the act of Sept. 5th, 1850, before the first of said several acts was passed.

3rd. That the said act of the 14th of Feb'y, 1853, and all other of the said several acts, if intended by the legislature to revive the authority of the corporation to issue the bonds, would contravene the provisions of said sec. 24, art. 7, of the constitution of Texas, that purpose not being set forth in the title, nor, indeed, anywhere in the body of the said acts.

4th. That if said several acts are introduced for any purpose, it can only be to revive a claim against the people of San Antonio, which
49 otherwise would have ceased to have any validity. Or, in other words, they would, without consulting the people of San Antonio, be a legislative attempt to create a new contract for them by a retroactive act, thus contravening the provisions of sec. 14, art. 1st, of the State constitution, and sec. 10th, art. 1, of the Constitution of the United States of America, which forbids a State to impair the obligations of a contract.

But the said objections of defendant having been overruled by the court and the said several acts admitted in evidence, the defendant excepted to such ruling, and now prays that this, her bill of exceptions, be allowed, signed, and made a part of the record; which is accordingly done.

[SEAL.]

W. B. WOODS,
Judge.

And afterwards, to wit, on Feb'y 15, 1875, defendant files his bill of exceptions marked 3 (endorsed, to wit, No. 1171. J. C. Barnes vs. City of San Antonio. Bill of exceptions of def't, No. 3. Filed Feb'y 15, 1875. M. Hopkins, clerk), in words, to wit:

In circuit court of U. S. for west. dist. of Texas, January term, 1875.

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } No. 1171. Law.

Be it remembered that on the trial of the above-entitled cause came on to be heard the pleas in abatement and general and special
50 demurrers and exceptions of defendant to the petition and amended petitions of plaintiff, and the same having been considered by the court were overruled and held for naught, whereupon said defendant excepted to such overruling, and now prays that this, her bill of exceptions, to such overruling be allowed, signed, and made a part of the record; which is accordingly done.

[SEAL.]

W. B. WOODS,
Judge.

And afterwards, to wit, on the 15th Feb'y, 1875, the defendant filed

his bill of exceptions, marked No. 4 (and endorsed, to wit, No. 1171. J. C. Barnes vs. City of San Antonio. Bill of exceptions of defendant, No. 4. Filed Feb'y 15, 1875. M. Hopkins, clerk), in words, to wit:

Bill of exceptions No. 4.

In U. S. circuit court, W. dist. of Texas, January term, 1875.

J. C. BARNES, *vs.* CITY OF SAN ANTONIO. } No. 1171. Law.

Be it remembered that on the trial of the above cause defendant excepted to the reading of all those portions of the answers to cross-interrogatories on part of plaintiff of the witnesses Tho's J. Devine, wherein he says, in answer to cross-int. 1st, "I am satisfied these failures or omissions were cured by subsequent legislation;" and wherein he says,
51 in answer to cross-interrogatory 8th, "I am positive that the bonds referred to were regularly, fairly, and honestly issued and delivered to said company," his said answer being conclusions of law; and also wherein he elsewhere, in answer to said cross-interrogatories, states conclusions of law.

And be it further remembered that, also, on said trial said defendant excepted to all those parts of the answers to cross-interrogatories of witnesses J. R. Sweet, John James, and San S. Smith, wherein they speak conclusions of law as to the regularity of the issue of the bonds and coupons questioned in this suit.

"But the court not desiring to pass upon said exceptions to said answers of witnesses during the trial, admitted said answers subject to the exceptions of defendant, and in passing judgment in said cause the court did not consider said answers so excepted to, nor did the same have any weight or influence in shaping the opinion and judgment of the court. Defendant at the trial excepted to the admission of said answers as aforesaid, and prayed that her bill of exceptions be allowed, signed, sealed, and made part of the record; which is accordingly done."

[SEAL.] W. B. WOODS, *Judge.*

(NOTE BY THE CLERK, AT REQUEST OF DEFENDANT'S COUNSEL.—From the word "but," on 13th line, to signature, in the handwriting of Judge Woods.)

And afterwards, to wit, on Feb'y 23rd, 1875, the following entry appears upon the minutes of the court, to wit:

J. C. BARNES *vs.* CITY OF SAN ANTONIO. }

52 The motion in arrest of judgment & for new trial in this case having been considered by the court, the same was ordered to be overruled, & defendant gave notice of appeal.

The motion in arrest of judgment is in words to wit:

U. S. circuit court, western district of Texas, January term, 1875.

J. C. BARNES *vs.* CITY OF SAN ANTONIO. } No. 1171.

Now comes the defendant herein and moves the court to set aside the

finding and judgment herein and grant a new trial, for the following reasons:

1st. Because the court overruled the exceptions of defendant to the evidence of plaintiff, referred to in said defendant's several bills of exceptions herein, and admitted such evidence in proof.

2nd. Because the finding and judgment of the court is contrary to the law of the case applicable to the evidence.

3rd. Because the finding and judgment of the court is contrary to the evidence in the case.

4th. Because the amount of the finding & judgment is excessive.

5th. Because the court improperly overruled defendant's general and special demurrer, and exceptions and pleas in abatement to plaintiff's petition and amended petitions.

DAVIS & BRITTON,
For Defendant.

53 And afterwards the following statement of facts was filed (endorsed: 1171. J. C. Barnes vs. City of San Antonio. Statement of facts. Filed Feb'y 15, '75. M. Hopkins, clerk), in words to wit:

In circuit court of U. S for western district of Texas, January term, 1875.

J. C. BARNES
vs.
CITY OF SAN ANTONIO. } No. 1171. Law.

Be it remembered that on the trial of the above entitled and numbered cause at said January term, 1875, of said court, the cause was by consent submitted to the court without a jury, and the following documentary evidence, depositions, and acts of the legislature of Texas were offered in evidence by the respective parties and admitted by the court, viz:

1st. Plaintiff offered in evidence the act of the legislature of Texas of Sept. 5th, 1850, entitled "An act to incorporate the San Antonio Railroad Company," under the 12th section of which he claimed that his demand arose. Defendant excepted (see bill of exceptions of City of San Antonio, No. 1), but the act was admitted and read, as follows:

54 An act to incorporate the San Antonio Railroad Company.

SECTION 1. Be it enacted by the legislature of the State of Texas, That S. A. Maverick, Gideon Lee, L. G. Capers, John D. Groesbeck, Nathaniel Lewis, I. A. Paschal, Tho's J. Devine, Francis Gilbeau, Tho's J. Perriman, B. Calighan, J. J. Giddings, Volney E. Howard, John James, B. E. Edwards, John Tuohig, Ludwig Colguhoun, J. O. Meusebach, O. Evans, J. H. Beck, Robert S. Neighbors, O. Lockwood, W. H. Merriwether, Enoch Jones, and their associates and successors, be, and they are hereby, enacted and established a body corporate and politic, under the name of the San Antonio and Mexican Gulf Railroad, with capacity in said corporate name to make contracts, to have suc'cession and a common seal, to make by-laws for the government and the regulations of the affairs, to sue and be sued, to plead and to be impleaded, to grant and receive, and generally to do and perform all such acts as may be necessary or proper for or incident to the fulfilment of this obligation, or maintainance of its rights under this act, and in accordance with the constitution of the State.

SEC. 2. That the said company be, and is hereby, invested with the rights of locating, contracting, owning, and maintaining a
55 railway, commencing at any suitable point on the Gulf between Galveston and Corpus Christi, and thence running by such course and to such point at or near the city of San Antonio as said company may deem most suitable, with the privilege of making, owning, and maintaining such branches of said railway as they may deem most expedient.

SEC. 3. That the parties named in this act, or a majority of them, with such persons as they may associate with themselves for this purpose, are hereby appointed commissioners and invested with the rights of forming and organizing said company, and of exercising the powers of directors until directors are chosen, when the powers of the commissioners shall cease.

SEC. 4. That the capital stock of said company shall be divided into shares of one hundred dollars each, each share entitling the owner thereof to one vote in person or by proxy at all meetings of the company, and the shares shall be deemed personal estate, and shall be transferable by any conveyance in writing recorded either by the treasurer in books kept by him for that purpose at his office, or by any officer duly authorized by the directors, in books kept by him at such
56 other place as the directors may appoint, such transfers as are recorded in any other place being within thirty days communicated to the treasurer and by him entered on his books.

SEC. 5. The immediate control and direction of the affairs of the company shall be vested in a board of not less than thirteen directors; said directors shall elect one of their own number to be president of the company; the first board of directors shall be chosen by the persons named in this act, and such persons as they may associate with themselves for that purpose; said election shall be held in the city of San Antonio, and at such time as the persons named in this act, or a majority of them, with their associates, shall determine, the directors thus elected by the stockholders; no person shall be eligible to the office of director unless a subscriber or owner of at least three shares of the capital stock; the directors shall have power to fill any vacancy in their body arrising from non-election or other cause; they shall have power to appoint a clerk, treasurer, or any such other officers or agents as they may deem necessary, and prescribe and require bonds for the faithful performance of their duties; they may make all necessary rules and regulations
57 for the holding of meetings and all other lawful things they may deem proper for the carrying out the provisions of this charter and business of the company; they shall keep, or cause to be kept, correct records of all meetings of the directors and company, and accurate books and accounts of the receipts and expenditures of the company, and all other books and accounts necessary and proper to be kept by such a company; a majority of the board of directors shall have the power of a full board, and all conveyances and contracts executed in writing, signed by the president and countersigned by the treasurer or any other officer duly authorized by the directors, under the seal of the company, and in pursuance of a vote of the directors, shall be valid and binding, and the book shall be open to inspection of stockholders.

SEC. 6. That the directors shall have power to dispose of the shares in said capital stock in such manner and on such terms as they may deem best for the interest of the company; and any agreement in writing whereby any person shall become a subscriber to the capitol stock of said company may be enforced against him according to its terms.

If any subscriber shall fail to pay any amount due upon shares subscribed for by him according to the terms of his subscription, the direct-
58 ors may, after twenty days' public notice, sell at public auction the shares subscribed for by said delinquents, and transfer the purchaser such shares; if the proceeds of the sale shall not be sufficient to pay the amount due with interest and charges, such delinquent shall be held liable to the company for the deficiency, and if the proceeds exceed the amount so due, with interest and charges, he shall be entitled to the surplus.

SEC. 7. It shall be lawful for the company to purchase and hold any land that may be necessary for the purpose of locating, constituting, and maintaining said railway, with all necessary depots and other buildings, and may, by their engineers or agents, enter upon and take possession of all such lands as may be necessary for the locating, constructing, and maintaining said railway, and if they shall not be able to obtain said land by agreement with the owner, they shall pay for the same such amount as shall be determined in the manner provided for in the following section. The land so taken for the railroad shall not exceed fifty yards in width, and for the depots and buildings only such further width as may be necessary.

SEC. 8. That any person from whom land has been taken for
59 the purpose set forth in the preceding section may apply to the district court of the county wherein said land is situated for the appointment of appraisers, and said court, after proof that the president of the company has been served with a notice describing the land ten days before the holding of the court, *the court* shall thereupon appoint three disinterested freeholders, citizens of the county, who shall appoint a time and place to hear the application and the company, to whose agent or president a reasonable notice shall be given by the court of said time and place; and said freeholders, after being sworn, shall, after hearing the parties, determine the amount of compensation as aforesaid, and make return of their award to said court at its next term; and said award may be confirmed, or, for any sufficient reason, rejected by said court in same manner as awards by arbitrators under a rule of court, and if confirmed by the court, judgment shall issue thereon as in other cases. In determining the amount of compensation to be paid as aforesaid, freeholders shall be governed by the actual value of the land at the time it was taken, taking into consideration the benefit or injury done to other neighboring of the owner by the establishment
60 of said railway. If in any case the amount found by the arbitrators shall not exceed the sum proved to have been offered by the company to the owner prior to his application to the court, the owner shall pay the cost of the proceedings; otherwise the company shall pay the same.

SEC. 9. That said company may acquire by purchase, donation, or in payment of stock such real estate as the directors shall think desirable for the purpose of aiding in the construction or maint*ai*nance of said road, and such real estate acquired by the company may be alienated or mortgaged by a vote of the majority of the directors for the construction or maintaining said railway. Said alienation or mortgage shall be signed in the name of the president and countersigned by the treasurer.

SEC. 10. That said company shall have power to borrow money on their bonds or notes, at such rate as the directors shall deem expedient: Provided, however, That nothing in this act shall be construed to confer banking privileges of any kind.

SEC. 11. That upon the written request of one-fourth of the stock-

holders, the president of the company shall call a special meeting of the directors, and upon the written request of said one-fourth of the
61 stockholders an election shall be held for directors, and a vote of two-thirds of the stockholders shall be sufficient to remove the directors and appoint others in their stead at any time before the expiration of the period for which said directors were originally elected.

SEC. 12. That the mayor and aldermen of the city of San Antonio be, and they are hereby, authorized to subscribe to the capital stock of said company for said city to an amount not to exceed fifty thousand dollars, as also such incorporated towns through which said railway may pass, inclusive of the town, if any, that may be its terminus on the Gulf, and to issue bonds, bearing interest, or otherwise to pledge the faith of said city or towns to pay for the same; and the chief-justice and county commissioners of the several counties through which the railway may pass shall be, and they are hereby, authorized to subscribe to the capital stock of said company, for their respective counties, to an amount not to exceed fifty thousand dollars, and to issue bonds, bearing interest, or otherwise to pledge the faith of their respective counties to pay the same, provided that the chief-justice and county commissioners of said counties shall not make such subscription un-
62 less two-thirds of the qualified electors of said county or counties, at an election to be held for that purpose, shall vote in favor of such subscription being made; and the chief-justice of any such counties may order such election to be held, and shall give notice of the time and object of such election, by causing notice thereof to be posted up in each precinct of the county at least thirty days before the holding of such election; said election to be conducted in the manner regulating county elections, so far as the same may be applicable; Provided, also, That said mayor and aldermen of the city of San Antonio and the towns upon the line and at the terminus of said railway on the Gulf shall not make such subscriptions unless two-thirds of the electors of said city or town, qualified to vote for town or city officers, at an election to be held for that purpose, shall vote in favor of such subscription being made; and the mayor of said city or town may order such an election to be held, and shall give notice, by publication in the newspaper published in the city or town, or by notice posted up in the precincts of said city or town, for at least twenty days previous to such election being held; and said election shall be conducted in the same manner regu-
63 lating the respective city or town elections, so far as the same may be applicable: Provided, further, That where any such subscription shall be made, and bonds therefor be issued by the mayor and aldermen of any of said towns or city, or by the chief-justice and county commissioners of any of said counties, it shall be their duty, respectively, to provide for the punctual payment of the interest that may from time to time become due upon the same, and for the payment of the principal thereof, by levying and collecting a tax on the real and personal property in the city, town, or county for which said subscription shall be made and bonds issued, which tax shall not be less than ten cents nor more than fifty cents on each and every one hundred dollars taxable property in said city, town, or county, and shall be assessed, and collected, and paid into the treasury of said city, town, or counties by which it is levied in the same manner the city or county tax in such city, or towns, or counties is assessed and collected, which tax shall be continued from year to year until the whole amount of the principal and interest due on said bonds shall have been fully paid and discharged; and when collected, after deducting therefrom the ex-

64 penses of assessing and collecting, shall be first applied to the payment of interest due on such bonds, and the remainder shall be applied to the payment of the principal on such bonds.

SEC. 13. That all dividends on the capitol stock of said railway company that may accrue to the said city, towns, or either of said counties, shall be appropriated to the payment of the principal and interest of any bonds that may be owing by them, respectively, and that may have been executed under the provision of this act, until the whole of said principal and interest shall have been discharged, and the said railway company is hereby authorized to pay the same accordingly.

SEC. 14. That it shall be the duty of said company, whenever any State or county road now established shall be crossed by said railway, to make and keep in repair good and sufficient causeways at such crossings; and in all cases where any person shall own lands on both sides of the railway, and there shall be no other convenient access from one point to the other, such owner shall have the right of passage, free of cost, at all reasonable times, crossing said railway; and if said company shall cross any navigable stream, they shall not interfere with the navi-

65 gation of the same.

SEC. 15. That if any person shall negligently or designedly injure or destroy any of the fixtures, buildings, machines, or improvements of said company, or any portion of the railway or its branches, he shall be liable to indictment for such offence or offences, and, upon conviction, he shall be punished by fine and imprisonment, at the descretion of the court, and shall also be liable to the company, in addition, for damages.

SECTION 16. That said company shall have the right to charge and receive such *votes* and prices for the transportation of passengers and freight as shall not exceed eight cents per mile for passengers, and for freight not exceeding seventy-five cents per one hundred pounds for every hundred miles the same may be carried: Provided, however, that the State shall have the right to regulate the charge for carrying the mails.

SEC. 17. That the company shall, after the completion of the railway, sell and alienate all lands held by said company, save such as shall be necessary for the maintenance of the railway, within the following periods: one-third of said lands within five years, one-third within ten years, and the remainder within fifteen years after the com-

66 pletion of said railway; and on failure by the company to alienate within the time limited, the comptroller of the State may, after public notice in a newspaper published at the seat of government and in the counties where the land may lie, cause said land to be publicly sold for cash, the proceeds of said sales, after deducting expenses of sale, to be paid to the authorized agents of the company.

SEC. 18. That if said railway is not completed within one year from the 1st of November, 1850, and if at least twenty miles are not in running order within three years of its commencement, then this charter shall be null and void.

Approved September 5th, 1850.

67 2. Plaintiff read agreed copy, marked "A," of proceedings of corporation city of San Antonio, taken in case No. 1172, R. S. Gould vs. city of San Antonio, and accepted in this case by consent as the copy, as follows:

(Copy.)

(B. A., pag. 113.)

Regular meeting city council, Dec'r 4th, 1850.

M'r Evans introduced the following resolution, which was adopted: "Resolved, That whereas by the 12th section of the act incorporating the San Antonio and Mexican Gulf Railroad Company, the mayor and aldermen of the city of San Antonio are authorized to subscribe (on behalf of said city) to the capital stock of said company to an amount not to exceed fifty thousand dollars, should the vote of two-thirds of the qualified electors of San Antonio be in favor of the measure: With a view, therefore, of ascertaining the wishes of the qualified electors on the question of the city of San Antonio subscribing fifty thousand dollars to the capital stock of said company—

Be it resolved by the mayor and board of alderman of the city of San Antonio in counsel assembled, That the mayor cause public notice to be given, at least twenty days before, of an election to be held on the last Monday in December, inst., for the purpose of takin' the votes
68 of the qualified electors of San Antonio on the question of subscription, the vote to be taken at the same time and to be governed by the same rules as prevail in the election of city officers.

Be it further resolved, That those in favor of subscription shall write or insert on their tickets, "In favor of subscription," and those opposed to the measure shall write or insert on their tickets, "Opposed to subscription."

Attest:

E. NAVARRO, *C.*

At an election held on the 30th day of December, 1850, being the last Monday in said month, at the city hall of the city of San Antonio, in pursuance of a writ of election issued by the mayor of said city, J. M. Devine, mayor, presiding, proceeded to administer the proper oaths to the clerks, and then declared the polls open for the reception of votes. Upon closing the polls at o'clock p. m. the following result was exhibited:

For subscribing $50,000 to railroad stock: In favor, 253 votes (two hundred fifty-three); against, 3 votes.

Attest:

E. NAVARRO, *C. C.*

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

69 It is hereby agreed that the foregoing two leaves are copies from the records of the city of San Antonio, and that they or either of them may be used in evidence on the trial of the above-entitled cause the same as, and in place of, the original records.

It is further agreed that the said copies may in like manner be used as evidence in the case of J. C. Barnes vs. The City of San Antonio, which

case is also pending in the same court. Notice to produce the original records is waived in both of said cases.

WALDEN & UPSON,
Att'ys for R. S. Gould and J. C. Barnes.
DAVIS & MURPHY, and
T. S. HARRISON,
By T. S. HARRISON,
Att'ys for Defendant.

3. Plaintiff read the interrogatories to, and answers of, F. L. Paschal and Sam. S. Smith, filed in the said case, No. 1172, Feb'y 1st, 1872, as follows, to wit:

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Interrogatories to be propounded to Thomas J. Devine, Samuel S. Smith, and F. S. Paschal, witnesses for the plaintiff in the above-entitled cause.

70 Interrogatory 1st. How long have you and each of you be'n residents of the city of San Antonio?

Int. 2. Have you at any time since you have been residents of said city been connected with the municipal government of said city? If so, when, in what year or years, and in what capacity were you so connected?

Int. 3. If you were not connected with said city government as officers or employees, then state whether you were acquainted with the administration of the affairs of said city during the years 1850, 1851, and 1852, and state also how you became acquainted with said administration.

Int. 4. How were the contracts of said city, and all agreements made by it, executed during the years 1850, 1851, and 1852? Did said city contract with, or without, a corporate seal? Did, or not, said city have and use a corporate seal during said years, or at any time durigg said years? You will please state when said city first commenced using a corporate seal; whether, before the time you may state, said city ever had or used a corporate seal; and, if no such seal was used by said city, why was it not used?

Int. 5th. You will please state all you know with reference to said city having or using a corporate seal during the years aforesaid,
71 together with your means of information.

Int. 6. Who was the mayor of the city of San Antonio in the year 1852, and acting as such during that year? If you give the name of the person who was then mayor, then state how he became so, whether he was elected or appointed, when and what his term of office was. State how long such person was mayor—from what time to what time.

WALDEN AND UPSON,
Att'ys for P'ff.

SAN ANTONIO, *January 26th*, 1872.

Service of foregoing interrogatories accepted. Notice and commission

waived, and it is agreed that the answers thereto may be taken before any officer authorized to take depositions under the laws of the State.

WILHELM THIELEPAPE,
Mayor of City of San Antonio.
DAVIS & MURPHY, and T. S. HARRISON,
Att'ys for Defendant,
By T. S. HARRISON.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hayer, a notary public in and for said county, this day personally appeared F. L. Paschal, of said county, to me well known, who being by me duly sworn to true answers make "to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S.
72 Gould is plaintiff and the city of San Antonio is defendant, responds as follows, to wit:

To int. 1st. I resided in San Antonio from 1838.

To int. 2nd. I have; from January 1st, 1850, to Jan. 1st, 1852. I was an alderman of the city of San Antonio.

To int. 3rd. As stated before, I was an alderman.

To int. 4th. They were made by the mayor and aldermen; the mayor signing the contracts, etc. When I was an alderman no seal was used up to 1852, to the best of my knowledge, as stated they did not. My impression is, in the year 1856. I do not think the city had a seal before.

To int. 5th. I have answered and explained all I know.

To int. 6th. Cha's T. King. He was elected at regular election in Dec'r, 1851, as may. for 1852, to serve for twelve months. He was mayor from Jan'y 1st, 1852, to Jan. 1st, 1853.

F. L. PASCHAL.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature, that the foregoing answers of the witness, F. L. Paschal, were taken, sworn to, and subscribed before me this 30th day of January, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

At the same time and place this day personally appeared Sam'l S. Smith, to me well known, who, being duly sworn as in caption under oath, says:

73 To int. 1st. I came in the early part of 1843, and have resided here ever since.

To int. 2nd. I was an alderman in the years 1846, 1847, & '48, and city treasurer in 1852, elected by people. I served as mayor pro tem., also, in 1847 and '48, in the absence of the regular mayor.

To int. 3rd. I was connected, as already stated, and, when not connected, was well acquainted with the administration of the affairs of said city.

To int. 4th. By the signature of the mayor without seal, contracts were made always without a corporate seal, and deeds and other instruments, also, without seal. At that time the city had no corporate seal. The first corporate seal was used by said city after the passage of the charter of 1856. Before 1856 no corporate seal was used for any purpose.

To int. 5th. This is already answered [illegible]. I was secretary of the council, and know, from my [illegible] corporate seal was had or used. I also was county clerk [illegible] from August, 1850, to the fall of 1856, consecutively, and [illegible] contracts, deeds, and other instruments of said city, and 'no' that no seal was used until 1856.

To int. 6th. Cha's T. King was elected for, and acted during, the year 1852, as mayor of the city. He was elected in December, [illegible]

74 by the people, to serve during the year 1852, and did serve, [illegible] for which year I was elected and served as city treasurer. King served as mayor in 1847 & '48, and in 1852.

SAM'L S. SMITH.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature, that the foregoing answers of the witness, Sam'l S. Smith, were taken, sworn to, and subscribed before me this 30th day of January, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

4. Plaintiff read the coupons described in his petition and amended petitions as follows:

75 31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 17, for $1,000.
C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 18, for $1,000.
C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 19, for $1,000.
C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 20, for $1,000.
C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 21, for $1,000.
C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 22, for $1,000.
C. F. KING *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer, thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 25, for $1,000.

C. F. KING, *Mayor.*

76 31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 26, for $1,000.

C. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 27, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 17, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 18, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 19, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 20, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 21, for $1,000.

C. F. KING, *Mayor.*

77 32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 22, for $1,000.

C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 25, for $1,000.

C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 27, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 27, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest due 1st September, 1869, upon bond No. 17, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 17, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 18, for $1,000.
C. F. KING, *Mayor.*

78 34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 18, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 19, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 19, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 20, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 20, for $1,000.
C. F. KING. *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 21, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 21, for $1,000.
C. F. KING, *Mayor.*

79 35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1869, upon bond No. 22, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st March, 1869, upon bond No. 22, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1869, upon bond No. 25, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st March, 1869, upon bond No. 25, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1869, upon bond No. 26, for $1,000.
C. F. KING, *Mayor.*

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C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1869, upon bond No. 27, for $1,000.
C. F. KING, *Mayor.*

80 34.] CITY OF SAN ANTONIO BONDS. [34.

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C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

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C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1868, upon bond No. 18, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1868, upon bond No. 19, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1868, upon bond No. 20, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1868, upon bond No. 21, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due 1st September, 1868, upon bond No. 22, for $1,000.
C. F. KING, *Mayor.*

81 33.] CITY OF SAN ANTONIO BONDS. [33.

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C. F. KING, *Mayor.*

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C. F. KING, *Mayor.*

101 5. Plaintiff read from agreed copy marked "B," proceedings of said corporation of San Antonio, also taken in said case, 1172, but used by consent as true copy for this case; plaintiff reading as his evidence from 1 to 4 pages inclusive, of said copy, as follows, to wit:

(Copy.)

(Book A, page 148.)

Call meeting city council Dec'r 31st, 1851.

The returns of the last election being opened, the mayor declared that C. F. King had received the highest number of votes for mayor, viz, 161 votes; and that for aldermen those who had received the highest number of votes were I. A. Urrutia, H. Huffmeyer, A. A. Lockwood, H. D. Steinberg, R. Herresa, J. R. Sweet, Peter Odet, and M. G. Cotton. For city collector C. D. Lyth received 200 votes, being a majority; and for city treasurer Sam. S. Smith received 215 votes, being also majority. And the said above-named persons were declared duly elected to fill said offices for the year 1852.

On motion of M'r Giraud board adjourned.

BEN. E. EDWARDS,
Secretary of the City Council for the year 1851.

Copy:
E. NAVARRO, *C. C.*

An ordinance authorizing the mayor to subscribe, on the part of the city, for fifty thousand dollars of the capital stock of the San Antonio and Mexican Gulf Railroad Company.

102 Whereas the entire vote of the citizens of San Antonio (save three) has been given in favor of the city taking the amount of stock in the San Antonio and Mexican Gulf Railroad Company which the charter of said company authorize, to be taken by the corporate authorities of this city;

Inasmuch, therefore, as the best interests require that all aid be given by this corporation that can be legally extended to this enterprise: Therefore—

Be it ordained and decreed by the mayor and aldermen of the city of San Antonio, in common council assembled, That the mayor be, and

he is hereby, authorized and required to subscribe on the book of subscription of said railroad company in the names and for the benefit of said city of San Antonio, the amount of stock which this city is by the 12 section of said railroad charter entitled to take; that is to say, for stock of said company to the amount of fifty thousand dollars ($50,000).

Passed February 24th, 1851.

BEN. E. EDWARDS, *Sec.*

Copied by—
E. NAVARRO, *C. C.*

A resolution providing for the levy of a city tax to satisfy the interest of railroad stock.

Be it resolved by the mayor and board of aldermen of the city
103 of San Antonio in common council assembled, That a city tax of one-fifth of one per cent. on all real and personal property be levied for the present year to meet from time to time the interest on the capital-stock subscription to the San Antonio and Mexican Gulf Railroad Company.

Approved April 26th, 1852.

C. F. KING, *Mayor.*

P. L. BUGNO, *Sec.*

Copy:
E. NAVARRO, *C. C.*

A resolution to provide for the issuing of the city bonds to the San Antonio and Mexican Gulf Railroad Company for the amount of subsciption of said city.

Be it resolved by the mayor and board of aldermen in common council assembled, That the mayor be, and he is hereby, required to issue the bonds of the city of San Antonio to the amount of fifty thousand dollars, payable twenty years after date, and bearing interest at the rate of seven per centum per annum, payable semi-annually out of the city treasury, the city reserving the privilege of redeeming the said bonds at an earlier date should they deem it advisable, it being the subscription of the city of San Antonio to the capital stock of the San Antonio and Mexican Gulf Railroad Company; said bonds to be issued whenever they may be required in accordance with the 13th section of an act to incor-
104 porate the San Antonio and Mexican Gulf Railroad Company, approved September 5th, 1850.

Approved April 26, 1852.

C. F. KING, *Mayor.*

P. L. BUGNOR, *Sec.*

Copy, attest:
E. NAVARRO, *C. C.*

Plaintiff here rests his case.

1st. Defendant then offered and read the part of 5th page of above agreed copy of proceedings of corporation of San Antonio marked "B," from the commencement of said 5th page down to and including the words "of the city council," on the 14th line of said page, as follows, to wit:

(Book B, page 99.)

Adjourned meeting city council Dec'r 9th, 1857.

M'r Ja's E. Gardner, ch. f. com., offered the following resolution; which was adopted, viz:

Be it resolved by the city council of the city of San Antonio, That the communication of the president of the San Antonio and Mexican Gulf Railroad Company withdrawing the proposition of said company made in January, 1855, to cancel the subscription of the city to the capitel stock of said company, the bonds of the city issued and delivered in payment for said stock to be delivered up to the city, be received and spread upon the minutes of the city council.

105 2. Defendant then read the depositions or answers to interrogatories of Nat. Lewis, Tho's J. Devine, John James, and Sam S. Smith, which depositions or answers were filed in said case, No. 1172, but are used as if taken in this case, by agreement, as follows:

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Interrogatories to be propounded to Tho's J. Devine, S. S. Smith, J. R. Sweet, John James, M. L. Merrick, and Nat. Lewis, witnesses for the defendant in the above-entitled cause.

Interrogatory 1st. How long have each of you been residents of the city of San Antonio.

Interrog. 2nd. Have you, or not, been acquainted with the municipal government of said city since 1850, and are you to any extent familiar with the history of the San Antonio and Mexican Gulf Railroad Company, and with the management of the same? If you answer yes, state if said road was commenced within one year after the 1st of November, 1850. If so, when, what was done, how many miles of said road were completed within three years after 1st day of November, 1850, and whether twenty miles were ever completed under said company, and how much and when and where.

106 Interrog. 3d. If in answer to the last interrogatory you state that the construction of said railroad was not commenced within one year after the 1st day of November, 1850, and that twenty miles of said road were not completed within three years after the 1st day of November, 1850, then state the extent that these facts were known, and whether or not they were publicly known, at that time. State fully in what manner and what means these facts were made known. State also what action, if any, was taken by the municipal authorities of San Antonio after the expiration of said three years from Nov. 1st, 1850, and were such actions publicly and generally known, and by what means.

Interrog. 4th. State whether or not any election was held in said city for the sole purpose of ascertaining whether said city would subscribe for stock in said company in exchange for city bonds and coupons. If you answer no, then state if said proposition was not voted upon, if ever, at the time of the regular city election, and in what year, and

what amount of stock, if any, was proposed to be subscribed, and was such stock ever issued to said city of San Antonio. How many days notice of such election was given, and by what means was the citizens of such election generally known? Were or not all the electors of said city permitted to vote by the terms of said election notice? If
107 not, from what cause or causes were they refused?

Interrog. 5th. State, if you know, what number of votes was cast at such election, or purported election, for subscribing for stock to said railroad company, and for issuing bonds thereto or therefor. State also what number of vote's there were in the city at that time, or qualified electors.

Interrog. 6th. If in answer to former interrogatories you are able to state any circumstances in relation to the manner of giving or publishing notice of and holding such election, and the number of votes cast for such subscription of stock, or issuing of bonds and c'upons, state the extent to which the circumstances mentioned by you were ever known, and whether they were publicly and generally known. State fully and particularly how and the extent of which these circumstances, or any of them, were known.

Interrog. 7th. Did or not the San Antonio and Mexican Gulf Railroad Company ever, within your knowledge, issue any stock to the said city of San Antonio in exchange for said bonds and coupons purported to have been issued by said city?

Interrog. 8th. If you, in answer to the foregoing interrogatory, say that bonds and coupons were ever issued by the city to the said
108 railroad company, at what time were they issued, and was ever an attempt made to place said bonds in the market in New York or elsewhere, and when and by whom? Were they ever of any value? If so, of how much value at that time? If you say they could not get a place on the stock market or exchange, what was the reason? Were or not the previous acts and doings between the city of San Antonio and said railroad company relating to the issue of said bonds and c'upons well known in New York City at that time, and what confidence was had in regard to the same, and after this time did said bonds ever increase in value, or did they decrease in value, or were they or not of any value ever after?

Interrog. 9th. Up to what date were said bonds still in the hands of said railroad company, and when were they taken away, and under what circumstances, and by whom?

DAVIS & MURPHY, AND
T. S. HARRISON, AND
E. G. HUSTON,
Att'ys for Defendants.

In the circuit court for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Cross-interrogatories to be propounded to Tho's J. Devine, S. S.
109 Smith, J. R. Sweet, John James, M. L. Merrick, and Nat Lewis, witnesses for the defendant.

1st. If in answer to the second interrogatory-in-chief you say that you have been acquainted with the municipal government of the city of San Antonio, and familiar with the history of the San Antonio and

Mexican Gulf Railroad Company, then state also whether, and how, you were connected with said municipal government. Did you ever hold any office or employment under said municipal government? If so, what office or employment did you hold, and when? Were you connected at any time with the said railroad company? If so, in what capacity—director or employee of said company? When, how long, and what were your duties? Did you have any contract with said company? If so, when, and what was your contract with said company? When was it entered into, and what were you to do under it? Was the city of San Antonio a stockholder of said company? If so, to what amount? Was its stock paid up, and how? Did said city have any special director in the board of directors of said company, and who was the director specially representing said city? Was not the mayor of said city always the
110 director, and was not said city one of the largest and principal stockholders of said company? Did not the city of San Antonio and county of Bexar own most of the stock of said company? If you say that said company did not commence its road within one year after the 1st of November, 1850, and that twenty miles were not completed within three years from said date, then please state also what you may know of the extension or revival of its charter, and the extension of time by the legislature.

2. If you state that the matters alluded to in the third interrogatory-in-chief, or any of them, were known, then you will also state to whom they were known, how many persons were informed of them, by whom, and in what manner. When did you become acquainted with them, and how? If you speak of any action taken by the municipal authorities of San Antonio, then state also how said action was taken, whether by resolution, ordinance, or in any other manner; and if by resolution, or in any other manner, by a meeting of the board of aldermen, was not such action recorded in the minutes and upon their books?

3. Were not the notices, returns, and other proceedings con-
111 nected with the election alluded to in the 4th interrogatory-in-chief in writing, and were they not recorded in the books and records of said city? Was not the stock of the city of San Antonio entered upon the stock-book of said railroad company like the stock of any other stockholder? Was not the stock of the city subscribed by the mayor in the same manner in which other stockholders subscribed their stock? And was not this subscription on the part of the city made after the election by the people upon the question of subscribing? If you say that not all the electors of said city were permitted to vote, then state *here* and by whom they were *permitted* to vote; whether you were present at the election, and who was refused a vote. State the names of the qualified voters whose votes were refused, so far as you can, and state the number of qualified voters whose votes you saw refused at said election. Do you not know that the election was fairly and honestly conducted? Were not the votes of all qualified voters who offered to vote received?

4. Were there number of votes cast at the election returned in writing, and were they recorded in the books and records of said city?
112 Did you yourself see the election returns, or count the ballots? If you undertake to give the number of voters in the city at that time, what means had you of ascertaining that number? Do you speak from actual knowledge, or do you estimate the number? If from actual knowledge, how 'as that obtained? If you estimate, upon what is your estimate based?

5. If you say, in answer to the 6th interrogatory, that any of the cir-

cumstances referred to in said interrogatory were known, you will now state what particular circumstances were known, to whom they were known, when and how you know they were known. Did you communicate them, or any of them, to any person or persons? If so, when, where, & how, to what person or persons, and to how many persons? Please state fully and particularly.

6. If, in answer to the 7th interrogatory-in-chief, you speak of the manner in which the stock subscription of said city was made, and in which the bonds and coupons were issued, you will then state, also, whether the city did not subscribe its stock like all other stockholders. Was not the stock subscription by said city made fairly and honestly, and were not the bonds of said city fairly and honestly issued, and in payment of its stock? Do you not know that this was so?

113 7. If you say, in answer to the 8th interrogatory-in-chief, that an attempt was made to place said bonds in the market in New York, then please state whether you were present when such attempt was made. When was the attempt made, and by whom? If you, or any one of you, was present when such attempt was made, in what capacity was the person acting who made the attempt? Was he an officer of the city? For what purpose was the attempt made? In what month and year was it made, and to whom and how many persons were said bonds offered? If you speak of the value of the bonds, then state what were the means and resources of the city to pay the same. Were these not abundant to pay all its liabilities, including these bonds? If you say that the previous acts and doings between the city of San Antonio and said railroad company relating to the issue of said bonds were well known in New York City at that time, then you will now state specifically what acts and doings were known in New York City. To whom were they known? How do you know they were known? State the persons by name to whom they were known, and what was known to them. If you cannot name the persons, to what number were

114 they known? How often have you been in New York City since year 1850, and when were you there? Name each and every time, if any, since the year 1850. How long were you there? Did you hear the matter of these bonds spoken of in the streets of New York, or at any place in New York publicly? To how many persons did you speak of these bonds in New York City, when, at what particular time and place? State the names and number of persons to whom you spoke of them, who was present, and at what place or places you spoke of them. Were not all your conversations in relation to these bonds, if you have had any such conversations, with private persons and in private places? Can you say, of your own knowledge, that the New York public had any knowledge at all of the San Antonio & Mexican Gulf Railroad and its transactions with the city of San Antonio? If so, what did they know? If any knowledge of said railroad and its transactions with said city was had in New York, was it not confined to a very few persons?

8. If you speak of the time at which said bonds were still in the hands of the railroad company, then you will also state whether they

115 were not regularly, fairly, and honestly issued and delivered to said company, and the time when. Were they ever at any time, &c., delivered to the city? Did they not remain in the hands of the said company, or under its control, from the time they were delivered until they were negotiated by them or their agents? Did not the railroad company elect a new president in 1856, and were not the hopes of the people as to the building of the road revived at that time? Did not the municipal authorities of the city of San Antonio, in the year 1856

or 1857, by ordinance or resolution assume and provide for the payment of the semi-annual interest upon the bonds, & recognize their validity; and was not this done to enable the new administration of the railroad to negotiate the bonds in question? Did not, thereafter, an agent or officer of the company go to New York with the said bonds, carrying with him the recognition of the same by the city authorities? Was not, thereafter, a portion of the road built and rolling-stock put upon it, and was not the portion so built used? Did not the company have locomotives, cars, depots, turn-tables, and other utensils pertaining to a railroad? And was not all this done after the year 1856, and after the
116 action of the city authorities in this interrogatory mentioned?

9. Do you know the plaintiff in this case? Do you know anything of the negociation of the bonds or coupons held by said plaintiff, to him the said plaintiff, and what consideration he paid for them? If so, state all you know, together with your means of information.

WALDER AND UPSON,
Att'ys for Pl'ff.

It is agreed that the answers to the foregoing interrogatories and cross-interrogatories may be taken before any officer of Bexar County authorized to take the depositions of witnesses under the laws of this State, without the issuance of a commission, all objections to the admissibility of the depositions so taken being reserved. It is also agreed that the depositions when so taken may be used in the case of J. C. Barnes vs. City of San Antonio, pending in the same court, with the like reservation of objections to their admissibility.

DAVIS & MURPHY, and
T. S. HARRISON, and
E. G. HURTON,
Att'ys for Defendant.
WALDER AND UPSON,
Att'ys for Pl'ff.

117 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hayer, a notary public in and for said county, this day personally appeared Nath. Lewis, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him," in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

To inter. 1st. Thirty-six years.

To int. 2d. I have been acquainted with the municipal government of San Antonio, and also the general history of said railroad. Not to my knowledge. Don't know when it was commenced. I cannot say. Can't say.

To int. 3rd. If twenty miles had been completed within three years from said date it would have been known generally. Nothing was known of such a fact. I do not now recollect what acts the authorities of San Antonio took after said three years.

To int. 4th. No. Not to my knowledge. It was. The year I do
118 not recollect, but think in 1850. My impression is fifty thousand dollars. Never to my knowledge. 19 days' notice were given by an election notice through a newspaper called the Western Texan, published by Lewis & Grosbeck, which said Lewis is myself, of December 12th, 1850, the said notice bearing date of De'b'r 9th, 1850, ordering an

election to be held on De'6r 31st, '50, for a mayor, aldermen, etc., and also to see if the city will vote to subscribe for the sum not exceeding fifty thousand dollars in the San Antonio and Mexican Gulf Railroad. Generally, I should think, as far as I know, the reason why the electors in general did not vote was, that it was in the railroad charter that it took ⅔ of the whole electors to carry the question, and not ⅔ of what voted, and considered by not voting the vote would count against the proposition.

To int. 5th. I do not know.

To int. 6th. By general report.

To int. 7th. Never to my knowledge.

To int. 8th. They were issued, as I understood. Do not know. I have heard there was. Don't know. I never considered them so. The reason was that I thought they were not issued according to law. I do not know. In my opinion, and of what I know of them, they never were of any value.

To int. 9. Don't know.

119 To X-int. 1st. I never held any office under the city government, but by the controversy of that days between those in favor and against the railroad I derived my intelligence. I was city printer at the time, and printed also for the R. R. company—never further than stated—printing anything they brought to the office and paid for. Never had a contract except in the printing line. The city had subscribed, but no stock was issued to my knowledge. I don't think that neither city nor county ever revived stock. I do not now recollect, as the controversy had passed from before the people.

To X-int. 2d. By general notoriety—I became acquainted by general talk—I know that action by the city was taken, but do not know or recollect how.

To X-int. 3rd. There are some records in the city books; but to my knowledge not correct in the votes; nor are they certified to by any one. I do know of as many as thirty votes that I saw put in were not for the railroad, when but three appear in the pretended record as opposed to said subscription for the road. I do not know whether stock for the city was rendered on the books of the company or not. I do not know that the mayor subscribed such stock, nor do I know the form, or could ever learn from any person whether such stock was issued,

120 or any other stock to any other person. I was opposed to the city subscribing stock all the time. I was in favor of McDonald for mayor at the election held December 30th, 1850. I had in my printing-office several hundred tickets struck off, with no railroad, neither for or against it, on the ticket, and I am confident that I give out at least more than thirty tickets of the kind of spoken, not charged for or against, which I saw the voters vote them, and by the writing or pretended record of what pretends to be the number of votes against the proposition is but three. I do not know about subscription of stock after election. I do not know of any one being refused. I saw none refused. I think all voters who offered to vote were allowed to vote.

To X-int. 4th. I cannot say whether they were returned in writing. There is on page 119, in a book for the city minutes, the result of an election held on the 30th of December, 1850, held for the election of mayor and city officers, and to vote on the railroad question, but not certified by any one. I did not. I do not undertake to give the number of votes at that time.

To X-int. 5th. I think it was generally known; I spoke about it all the time before election to as many as I had time to talk to.

To X-int. 6th. I don't know; not in my opinion at that time,
121 nor in this time. In my opinion, at the time it was all wrong, as I never believed the vote was in favor of the railroad subscription.

To X-int. 7th. I was not in New York. Don't know; don't know. If made, I suppose to raise money. Do not know; I don't think they had any value. I could not say. I do not know. Can't say. Don't know. Can't give names. I was in New York in 1858 a week. Can't say any more in answer to int. 7.

To X-int. 8th. I don't believe there ever was any honesty in the concern. Don't know. As far as I know, there were several presidents, elected at different times; but I do not think the people ever believed there being a charge to get a railroad here throug' their act, or even they, the presidents, ever believed they would build the road. They might have done, for the object to collect a few dollars; but I don't think they had the power or right to raise said debt. It is my opinion it was done to raise a few dollars to allow some to go on a spree to New York. I do not now recollect. They were going to New York frequently, whenever they could raise the money to do so. It was; but I do not know the time. I have heard it was. I have been told so. Never saw them. Don't know.

123 To X-int. 9th. I do not. I do not.

NAT. LEWIS.

THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness, Nat. Lewis, were taken, sworn to, and subscribed before me this 5th day of February, A. D. 1872.

[L. S.] JULIUS HAYER,
Not. Pub., Bexar Co.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hayer, a notary public in and for said county, this day personally appeared Tho's J. Devine, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him," in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff, and the City of San Antonio is defendant, responds as follows, to wit:

Answer to interrogatory 1st. I have resided in San Antonio nearly twenty-nine years.

Interrogatory 2d. Answer. I have been acquainted with the municipal government of San Antonio since 1850, and I was quite familiar
123 with the history of the San Antonio and Mexican Gulf Railroad Company, and with the management of the same. I don't believe a commencement was made within one year after the 1st of November, 1850. Captain Beck went out; had a few farmers were with a plough, and his negroes threw up some earth. It was not a bona-fide commencement of the road by the company. No portion of the road was completed within three years, and twenty miles were never completed by the company. I believe the company constructed about five miles of railroad from the town of Lavaca some time during the year 1857 or 1858, but am not positive as to date.

Interrogatory 3rd. Answer. The failure to commence the work by the company within one year was known to all in San Antonio who felt interest sufficient to inquire respecting this subject, and the failure to construct the twenty miles required by the charter was known to all in-

telligent persons in Bexar County, and could be readily known by any and all persons elsewhere who might be sufficiently interested to make enquiry. "The Ledger," newspaper, published in San Antonio, gave notice (to the extent of its limited circulation) to the public, by publishing, at different times, all the facts and a vast amount of
124 falsehood on this subject.

Answer to interrogatory 4th. I have a distant recollection of an election having been held for the purpose of ascertaining the sentiments of the citizens of San Antonio on the subject of the city subscribing fifty thousand ($50,000) to the capital stock of the San Antonio and Mexican Gulf Railroad Company and giving city bonds to the company for that amount, but cannot state whether or not the election was held for that "sole purpose." The vote was taken and was found to be decidedly in favor of the subscription, as above stated. I am not aware that the stock was ever issued to the city; it may have been, but I have not at present any recollection of it. The proper notice was, I believe, given, and the usual mode for giving information carried out, or followed. I have never heard of any person qualified to cast his vote having been refused that right at the election referred to in this answer.

Answer to interrogatory 5th. I do not recollect the number of votes cast at that election or the number of voters in the city at that time; the election was fairly held, and my recollection is that no murmers were heard or allegations or charges of unfairness made at the
125 time, or after—not until quite recently, respecting any unfairness in the manner of ordering, the mode of holding, or the returning the final result of that election.

Answer to interrogatory 6th. I refer to my preceding answer as an answer to this interrogatory.

Answer to interrogatory 7th. I have no recollection of any stock having been issued to the city of San Antonio. The books of the company will show that it was considered and treated as a stockholder, and through its mayor exercised all the rights like any other stockholder or director.

Answer to interrogatory 8th. The bonds to the extent or amount of fifty thousand ($50,000) dollars, with interest coupons attached, were issued and delivered by the then mayor of the city, Chas F. King, I believe, in 1852. An attempt was made in the summer and fall of 1853 by the late Enock Jones and myself to sell or pledge ninety thousand ($90,000) dollars of the bonds of the city of San Antonio and county of Bexar, in the cities of New York and Boston. The facts were in substance as follows:

In April, 1853, after a full and general advertisement for a contract to construct the road from the town of Lavaca to San Antonio, the contract was awarded to Jones and myself, we being the only parties offering terms that were to any extent within the apparent ability
126 of the company *company* to comply with; our contract to build and equip the road, erect station-houses, &c., on the line was for the sum of twenty-seven thousand ($27,000) dollars per mile; our pay was to be made in bonds of the company, bearing, I think, seven (7) per cent. interest. We received under this contract the bonds of the county of Bexar and city of San Antonio, amounting to ninety thousand ($90,000) dollars; the remaining ten thousand were pledged to Doctor Edwards and a person by the name of Mullen.

We entered into a contract for 90,000 cross-ties with a M'r Platt; furnished him with two steam-mills, cash, and drafts payable in thirty, sixty, and ninety days, and then went to New *New* York to negotiate

or sell the city and county bonds and have struck off the three hundred and sixty thousand ($360,000) dollars of the railroad company's bonds, and signed by the president of the company, M'r Henry Sheldon, who was residing in that city.

After our arrival and the engraving and execution of the bonds, we made several attempts to sell or hypothecate the bonds of the company, as also the bonds of the city and county of Bexar; our efforts were unavailing. The resources of the company were considered of little value,
127 and the sum per mile for constructing and equipping the road was considered by some too small to leave a margin for even moderate profits. I do not believe the company's bonds were worth anything. The city and county bonds could have been sold for twenty-five or thirty cents on the dollar.

We were offered a trade for the city and county bonds by an old acquaintance of M'r Jones; the consideration was to have been carts, wheelbarrows, picks, spades, shovels, and slop-clothing suitable for railroad laborers. M'r Jones was in favor of the trade, believing that this, in connection with resources of our own, would enable us to make a commencement on the road and something favorable would in the mean time turn up. I was not willing to incur any more responsibility or loss, as I felt reasonably certain that neither our efforts or those of any other person in Bexar County could galvanise into vitality the railroad enterprise. We then went to Boston, remained there about twelve days, when I started for San Antonio, taking with me, with the consent of M'r Jones, the railroad company's and the city and county bonds as we received them, and upon my offer we were released from the obligations of our contract, and turned over to the company all the bonds received with the cupons attached.

128 We did not attempt to advertise or put any of the bonds on what is called the stock-market. The reasons were, a violent political contest had raged in Bexar County previous to the August election in 1853, between the advocates and supposed opponents of State aid to railroads; those charged with being opposed to what was called "the loan bill" were all defeated. The defeated party and some who supposed the contract would be a profitable one became violent opposers of the contract and the railroad company, and were not very nice as regarded either the accuracy or decency of their language.

Their organ, the San Antonio Ledger, was filled with editorial and communications, a mass of truth and falsehood. This paper was sent to all in New York that it was supposed we would come into communication with, and the result was that although the bonds of the city, county, or company were worth but little as objects for investment, they grew in the opinion of all who read the paper referred to or who heard of it to possess even less value. The city and county shortly after refused to collect the interest-tax, and the bonds grew from bad to worse.

After my delivery of the bonds to the company and even release from our contract, nothing was done in the way of effort until after
129 the election of Mayor Clarke as president of the company; I think it was in 1855 or 185[illegible]. He set out shortly after our trip to New York; one or two miles from this city his trunk was taken from the boot of the stage, cut open, and plundered of its contents. The thieves did not take the city and county bonds that were in the trunk. When he obtained his trunk the bonds were likewise recovered. These bonds were under the control or in the possession of the railroad company down to the year 1857, or perhaps later, and were of but little value in

the opinion of those who knew anything respecting the surrounding circumstances.

Answer to interrogatory 9th. I have answered this interrogatory in the preceding answer.

Answer to X-interrogatory 1st. I held the office of city attorney from 1845 to 1850. I was a director of the railroad company from its first organization down to the close of the year 1853, as nearly as I can recollect. I was one of the contractors with said company for the construction of the road from Lavaca to San Antonio; it was entered into in the spring of 1853, in San Antonio. We were to construct the road, the first section, within the time required under the charter, and the remainder in accordance with the charter. The city of San Antonio was
130 always considered a stockholder from the time of the execution of its bonds by Cha's F. King, the then mayor. Its stock was by all considered paid up. When its bonds were delivered to the company it was represented in the board of directors; it was represented by its mayor as director. The city of San Antonio and the county of Bexar were the two largest stockholders, and could always control the directory by their votes for the election of directors. I have already stated in my answers to direct interrogatories that the road was not commenced or completed according to its charter; but I am satisfied these failures or omissions were cured by subsequent legislation.

Answer to cross-interrogatory 2d. They were known, as stated in my answer to the 3d interrogatory, to any intelligent person in San Antonio who felt the slighest interest in the matter; Sam. S. Smith, John James, Antonio Marcham, Tho's Whitehead, Daniel Devine, L. York, F. Granado, J. F. Dashiel, John C. French, and to all the prominent citizens then living, such as W'm B. Jaques, Orean B. Brackett, John Bower, John M. Carolan, John D. McLeod, Bryan Callaghan, S. A. Maverick, Joseph H. Peck, and the entire board of directors. I was a director,
131 and knew it as well as I knew anything connected with the affairs of the company. I cannot now say who informed me of some of the facts, but it was the topic of some of the conversations of the board when it met. I cannot now say who informed the other persons named in this answer, and I can hardly suppose you are serious in requesting me to answer after the lapse of nineteen years "by whom and in what manner" the public were informed that the railroad company failed in 1851, '52, '53, or '54 to construct their road, which you know and all intelligent men know is not yet constructed. I only know that the city collector, under instructions, failed and refused to collect the tax for the payment of the interest falling due on the city railroad bonds. I have neither the time or inclination to examine the city records.

Answer to interrogatory 3d. The notices were, I believe, printed; the returns and other proceedings connected with the election referred to were in writing. I suppose they were recorded, but cannot say. To the best of my recollection the entry on the books of the company, with the amount of stock subscribed by other stockholders. The stock was subscribed by the city in the same manner as others, save the
132 fact that the city gave her formal bonds by her mayor; others simply subscribed by signing, in blank-books, an agreement to take so many shares of the capital stock of the company. The subscription on the part of the city was made after the vote by the people. I believe the election was fairly and honestly made, and I know of none entitled to vote who were refused; if such had been the case, I believe I would have heard of it long before this.

Answer to X-interrogatory 4th. I do not know whether the votes were

recorded or not; I did not see or count the returns. I refer to my answers to interrogatories-in-chief numbered 3 & 4 as the answer to this interrogatory.

Answer to X-interrogatory 5th. I can only refer to former answers as my answer to this interrogatory.

Answer to 6th X-interrogatory. I believe the city subscription was fairly and honestly made, and the bonds fairly and honestly executed, and delivered by O. F. King, as mayor; he could have no interest, as the company had no funds to tempt him or bribe him if it were possible to do so, and the president and directors had no interest to advance beyond increasing the value of their property, in common
133 with all others, by the construction of the railroad.

Answer to 7th X-interrogatory. I have not stated that any attempt was made to place these bonds on the market, if by this term I am to understand you to refer to offering them at the stock exchange in the usual manner. Enoch Jones and myself tried to dispose of them through the efforts of Henry Sheldon of New York. We met several gentlemen there. I cannot now recollect their names. Sheldon and his son were present. It was in his office an effort was made to induce Winslow, Lanier & Co. to take them; they would not touch them. This was in last of August of and September, 1853. The city of San Antonio had means to pay her liabilities, but the citizens were reluctant to pay their taxes. The newspaper was circulating falsehoods, and the investment, to a New Yorker, in San Antonio bonds was not desirable, or even a prudent investment, in the slightest degree. The effort was made to at least twenty or more. We then went to Boston; called at the office of Pierce and Bacon; learned from them that Boston was not likely
134 to invest; met at the "Revere House" two or three persons, but could not do anything. I have not been in New York since the fall of 1853; I was there twice in that year; the first time was for six weeks; the second time I remained almost ten days. I refer to my answers to direct interrogatories.

Answer to X-interrogatory 8th. I am positive that the bonds referred to "were regularly, fairly, and honestly issued and delivered to said company" in, I believe, the year 1852. I am not aware of these bonds ever being redelivered to the city. I believe they remained, after their redelivery or surrender them to the company, in its possession or under its control. I cannot state with certainty the time of the election of the new president referred to. There was renewed hope that something might be done. I cannot state whether or not the city made provision for payment of interest or not. Major Clark, the then president, made one or perhaps two trips to New York with these bonds, in, I think, 1858. Major Clark made arrangements with Reid & Tracy of New York, it may have been in 1857. I cannot state positively as regards the day, month, week, or year. Reid & Tracy furnished the iron for almost
135 five miles of road, running out from the town of Lavaca, taking a deed of trust on the road-bed and material for security, and requiring, in addition, collateral security in the notes of citizens of San San Antonio to the full extent of their debt. M'r S. A. Maverick gave his note for ten thousand ($10,000) dollars; I gave my note for three thousand five hundred ($3,500) dollars; several others for various amounts. The road-bed was graded or thrown up on the prairie, crossties and rails laid down, by the company.

Under the management of Clark, Reid & Tracy's debt matured. There was no money to pay them. They advertised the road and sold it out under the provisions of the deed of trust. The road and what little

rolling-stock belonged to the company were sold for less than the amount of indebtedness, and M'r Maverick, myself, and others were sued on our security notes. W'm Maverick, to make up the [illegible] paid as his pro rata two thousand ($2,000) dollars. I paid seven hundred ($700) dollars, and I presume others paid. In the construction of the five miles, with no grading worthy of notice, the company consumed the land granted by the State, and obtained what rolling-stock it had on the credit of M'r Maverick and others, in addition to the iron obtained from Reid & Tracy.

136 The work was an abortion from first to last. I am not aware that one dollar was earned by the road. What amount of the bonds of the city or county was expended in this work I am unable to state. I cannot say as to turn-tables. The company had at Leveca a frame building which might be called a depot. I believe it had not more than one locomotive, purchased on credit from the Union Car-Works Company and never paid for. The suit against the securities of the company was dismissed for a failure to prosecute, some three or four terms since. The work done by the company was subsequent to 1856.

Answer to X-interrogatory 9th. I do not know the plaintiff in this case. I know nothing about the negotiation of the bonds referred to in this interrogatory, and consequently know nothing about the consideration paid for them.

THO'S J. DEVINE.

THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness Tho's J. Devine, written down by him, were sworn to and subscribed before me this fifth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

137 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, notary public in and for said county, this day personally appeared Ja's R. Sweet, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

To int. 1st. I have resided in San Antonio nearly twenty-three years, (23.)

To int. 2d. Have had some knowledge of the municipal officers of said city, having been several times since 1850 alderman and mayor. Have some partial knowledge of the history of the San Antonio and Mexican Gulf Railroad Company, and the management of the same. A so-called commencement was, I think, made within one year of the 1st of November, 1850; exact I cannot state; some brush was cut and labor done on the presumed line of the road by Capt. S. H. Beck, dec'd. I cannot state what done within three years after the first day of November, 1850; nor that twenty miles were ever completed by said company; nor when and where; nearly twenty years having passed I cannot state positively as to dates.

Interrogatory 3. Answered in reply to inter'gy No. 2.

138 To int'y 4. An election was held in said city for the sole purpose of ascertaining whether said city would subscribe for stock

in said company in exchange for city bonds and coupons. Said proposition was voted upon, but I cannot state if it was at the time of a regular city election, nor the year, but the amount was fifty thousand dollars. I do not know whether stock was issued to the city of San Antonio or not. The days' notice I do not remember. The means by notice of election were given, I think, in the city newspaper and by handbills posted in the city. I have no knowledge of any of the electors of said city having been refused the privilege of voting.

Int. 5th. I neither know the number of votes cast at said election nor the number of vote's or qualified electors in said city at that time.

Int'y 6th. Answered in answer to interrogatory No. 5.

Int'y 7th. Answered in reply to interrogatory No. 4th.

Int'y 8th. Dates I cannot swear to, as regards the bonds and coupons assessed by the city of San Antonio, nor of my own knowledge their value in New York. Several parties in New York bought the bonds in trade for assorted merchandise. Nor do I know whether they could or could not be placed on the stock or exchange market. Nor can I state whether the previous acts or doings between the city of San An-
139 tonio and said railroad company were well known in New York City; to some persons they were; those who had business transactions with Western Texas. Never knew the value they sold for then or afterwards.

Int'y 9th. I know nothing of the date when those bonds were in the hands of said railroad company when taken away, under what circumstances, or by whom.

X 1. I was at different times, from 1850 to 1862, one of the aldermen and twice mayor. My connexion with the San Antonio and Mexican Railroad was as a director in its early organization. I never had any contract with or was an employee of said railroad co. The City of San Antonio was considered a stockholder of said co., and to the extent of its subscription of fifty thousand dollars its stock was paid for in bonds, bearing interest, with interest coupons attached. The mayor represented the stock owned by the city, as a direction; and the City of San Antonio and Bexar County, owning each fifty thousand, were, I think, the largest stockholders of the company; of the extension of time by the legislature I know, but date and terms I cannot state. I cannot state to how many persons were informed of any action of the municipal authorities of San Antonio, was known, except that the meeting of the mayor and aldermen were public. Their acts were by resolu-
140 tion or ordinance at such meetings, and duly recorded in the book kept for the purpose.

3. Returns, notices, alluded to in connexion with that or any election, it was the custom to record in record-books of the city. I know nothing of the entry on the books of said railroad company of that or any other stock, except that the company kept a book for that purpose. I know of no electors of said city having been refused the right to vote. I was present part of the time of the election and saw nothing of the kind. I believe the election to have been fairly conducted.

4. The names and number of voters are usually in possession of the city, and numbers recorded in their books. I cannot state the number of voters at that time in the city of San Antonio, though residing here.

5. I do not know the particulars alluded to. All their proceedings are matters of record, and I believe the stock-subscription to have been made fairly and honestly, and the bonds issued fairly and honestly in payment of its subscription by the city authorities. I know nothing of any attempt to place said bonds upon the market in New York. I considered the resources of the city, properly managed, ample to pay its liabilities.

I cannot say that any of the transactions between the city and company [illegible]

141 To persons having [illegible]

were known. I could not state what was known of [illegible] number, but should not consider the business public of [illegible] knowing anything about the matter, with the exception [illegible]

8. I know nothing of the time said bonds were still in the [illegible] of the railroad company, but consider them fairly and [illegible] their hands, and never knew of their being redelivered to [illegible] A new president was elected, I think, in 1856, and strong [illegible] of the early building of the road entertained by the people. The municipal authorities levied a railroad-tax, but in what year I cannot state; but taxes were collected to a certain extent in 1858 & 1859. I know nothing of the negotiation of the president, his agent, or officers, of the bonds alluded to. The railroad-tax was understood to have been levied to pay the interest of the bonds. A portion of the road was built from Lavaca to Victoria, and rolling-stock put thereon, and I believe it was subsequent to 1856.

9. I do not know the plaintiff in this case, or of the negotiation of the bonds or coupons held by him, nor the consideration he gave for them.

JAMES R. SWEET.

142 THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness Ja's R. Sweet, written down by him, were sworn to and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared John James, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

To int. 1st. Since February or March, 1838.

To int. 2d. To some extent I knew the affairs of the city, and also with the S. A. & M. G. R. R. for 3 or 4 years after granting of the charter in 1850. Was a director of said R. R. Co. up to a short time of the letting of the contract to Jones & Devine, say in April, 1853. I can say that one Capt. Beck, now deceased, was employed by the R. R. Co.

143 to plow some ground and level it upon a spot upon which the railroad would probably run, say two or three miles from [illegible] This was the only commencement made that I know of. As [illegible] know none was completed. The S. A. & M. G. R. R. was sold by [illegible] in April, 1859, at which date twenty miles of the road were not completed.

To int. 3rd. The facts were notoriously and publicly known at the time. Everybody knew them who chose to enquire or would read the papers. On November 26, 1853, the city council repudiated certain bonds which had been issued to the company, on the ground of illegality in their issue, which was also generally known in this community.

To int. 4th. An election was held on Dec'b'r 30, 1850, for mayor, alder-

men, & other officers, and also for the purpose of subscribing fifty thousand dollars railroad-stock. I don't know that the stock was ever issued to the city. I don't know the length of time of notice or the means. It was known well to myself, and all others who took an interest therein; persons were allowed to vote who could show that they had paid their taxes; I think now, others.

To int. 5th. Some 256 voters voted; but this number is a small proportion of the voters at that time. The exact number of voters at that time I cannot give.

To int. 6th. I only know to the extent I have stated previously.

144 To int. 7th. I don't know that they did.

To int. 8th. It is within my knowledge that certain bonds and coupons were issued by the county and city, or by one or the other, I think both, to the R. R. Co.; efforts were made to dispose of them by parties acting for the R. R. Really everybody considered them worthless at home. The reason why they could not be negotiated abroad was that myself and others advised our friends in New York that we held that they were illegally issued; that the contract was unfairly made with regard to the interest of the stockholders, and that we believed the road would never be built by these contractors or their friends It was understood here that individuals were given stock enough to qualify them to become directors who would vote for the letting of the contract to Jones and Devine. The acts and doings between the City of San Antonio and said R. R. Co. were known to many New York merchants, who sold goods to San Antonio merchants, of whom New York capitalists & R. R. men would enquire. Among business men their bonds were generally considered to be of little, if any, value.

145 To int. 9th. Several men, agents or contractors, handled them or controlled them at different times, up to the time that the R. R. was sold by trustees, as before stated. I never was connected with the municipal government of the city of San Antonio. I was director on the R. R. up to a short time of the letting of the contract to Jones & Devine; held no other position. My name was left out in the election for directors because it was understood that I would not vote for the contract to Jones & Devine. Never had a contract with said company. I can say in elections the mayor voted as director, representing the city to the extent of $50,000.00. So far as I know the stock was paid in bonds. The mayor, as aforesaid, for a time after the charter was granted and the contract let to Jones & Devine. Since then I don't know to what extent he took part in the affairs of the company. I think the larger part of the cash-stock was taken by and represented by the mayor, acting for the city, and the chief justice, acting for the county, at the time of its sale by trustees, in April, 1859. A few miles, I can't say how many, were in running order, from 5 to 7 miles. I don't recollect the period or time connected with the revival or extension of charter by the legislature.

To X-int. 2nd. The facts were known to the community generally. Much interest was taken at the time by intelligent people, and

146 nearly everybody was talking about it and the chances of its progress. Acts by the city authorities were taken by a resolution; their action was recorded upon their books.

To 3rd X-int. An entry was kept of the proceedings of the election, as usual in such cases. I have a list of the stockholders, in which the city and the county are each put down with five hundred shares, at one hundred dollars each; said list being of those who subscribed otherwise than those who subscribed in land. As far as I know it was. It must

have been made after the vote of the people. A man was not permitted to vote who had not paid certain taxes. I do not know who was refused to vote, as I seldom stayed about the polls when people were voting. I saw none refused, as far as my recollection now serves me. I do not know whether the election was fairly conducted or not. I don't know.

To 4th X-int. The city records show that certain numbers of votes were cast. Do not recollect seeing the election-returns, or count the votes. Can't answer the balance further than I have answered.

To 5 X-int. I know that less than two-thirds of the legal voters have voted; know no more than that it was known here to myself and others that such an election would be held.

147 To X-int. 6. I do not know that the stock or bonds were fairly issued; think the stock was subscribed like other stock, by the mayor representing the city.

To X-int. 7th. I don't say that I know of my own knowledge that said bonds were put upon the N. York market, or that an attempt was made to do so. The city could have paid the bonds by the levying of a tax, provided that the tax could be legally enforced; the resources of the city were sufficient to pay the bonds and coupons and other indebtedness; I can't give the names or numbers of persons to whom the facts in regard to said R. R. were known in N. York City at the time; I made it a point to speak to New York men who came here on business; I know many New York merchants and their commercial agents at that time; I was in N. York City several times between 1850 and 1854, buying goods as a merchant of San Antonio; was favorably known to many business men in New York; can't recollect the exact dates of my visits to N. York City; do not recollect hearing of the bonds spoken of in N. York. I only spoke of these bonds to my acquaintances where I met them, and whom I thought might have any interest in them, as were likely to become interested in them, from the fact that they were doing business with this country. Such of the citizens of New York

148 who wished to obtain information of San Antonio and of business matters connected with the country could, by enquiry, find men in New York who would inform them.

To X-int. 8th. I have answered, as far as I know, this first question; don't know—don't know—don't recollect at what time a new president was elected; myself and most other persons of my acquaintance did not believe that the R. R. could be built by that company; so thought most everybody else as far as I know; don't know that the city of San Antonio in 1856 or 1857, provided for the payment of the semi-annual interest; about that time the company made an effort to go ahead, and parties were making efforts to dispose of the bonds by sale or by hypothecating them, professing to do so for the benefit of the road. Mayor Clark went to New York, I think, for that business; don't know to what extent the city authorities recognized the said bonds. About that time a few miles of that road was built and some stock put upon it, but was too short a distance to be of any use to the community. Don't know to what extent locomotives and other R. R. stock was put in use; don't know the date of the time these things were placed there, but were there to my knowledge in 1859, in connexion with the R. R.; don't know of the action of the city authorities mentioned.

149 To X-int. 9. Do not know plaintiff nor of the bonds or coupons or amount by him paid therefore.

JOHN JAMES.

THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness John James were taken, sworn to, and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for the said county, this day personally appeared Sam'l S. Smith, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him," in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and The City of San Antonio is defendant, responds as follows, to wit:

To int. 1st. Since 1843.

To int. 2nd. Yes; I don't know; do not know from my own knowledge what was done—don't know whether 3 miles were completed 3 years after 1850. I don't *not* know from my own knowledge, but understood that the road was made up near to Victoria, but not
150 within three years.

To int. 3rd. The facts of non-completion of this road were well known in this country as early as '52 and '53. Their actions were publicly and generally known by the municipal authorities instructing the collector to discontinue the collection of the railroad-tax. The people generally refused to pay the tax, and most of the stockholders refused to pay their installments to the subscription of said stock, and most the parties repudiating the donations of land made to said company, considering that the company have failed to comply with the conditions, said donations having been made in trust.

To int. 4th. No; but at the general election for city officers in last Monday, the 30th of December, 1850, the proposition was submitted to the voters whether the city should subscribe fifty thousand dollars in bonds or not. Such stock was not issued to said city. The election-notice was published in the Western Texan, a newspaper printed in the city of San Antonio, under the proprietaryship of Lewis & Grosbeck, in the issue of said newspaper dated December 12th, 1850. The election was held at the time mentioned above, and at which election no one was allowed to vote unless he had paid his city taxes, the clause in the charter then in force being enforced at that election, and of course excluding
151 a large number of voters who would have been entitled to vote under the election law of the State at general election.

To int. 5th. Two hundred and sixty-seven votes were cast for the mayor's office at said election of De'b'r, 1850. Two hundred and fifty-three votes were cast in favor of said proposition and three against it. In August 5th, 1850, in general election for State officers, 711 votes were cast in San Antonio, and in August 4th, 1851, 789 were cast for governor in this city.

To int. 6th. I answered this interrogatory in above.

To int. 7th. No; they, the railroad co., never issued any bonds or stock to said city to my knowledge.

To int. 8th. They were issued (the bonds, with coupons attached) by the city of San Antonio to the S. A. and M. G. R. R., in 1852. An attempt was made to place said bonds in the market of New York and elsewhere,

but said attempt proved to be a failure. One of the reasons was the repudiation of the bonds by the city council of said city of San Antonio Nov'b'r 26th, 1853, as appears from their minutes entered of that date, and well known in the community, and the city council further ordering their collector to call on the treasurer of the R. R. Co. and demand the interest to him illegally paid on the city bonds. The bonds were never of any value in this community. Of their value elsewhere I do
152 not know anything. The previous acts and doings between the city of San Antonio and said R. R. Co. relating to the issue of said bonds and coupons were well known in Texas at that time, but how far they were known in N. York and elsewhere I do not know. There was but little confidence in them here, never having heard of any bought or sold here.

To int. 9th. I do not know how long the bonds or any portion remained in the hands of the R. R. Co., or when they were taken away and by whom.

To 1st X-int. I was an alderman for several years, also city secretary, and was elected and served as city treasurer for the whole of the year 1852. I was a director of said company at one time; served but a short time. I had no contract with said company. The city of San Antonio was a stockholder of said company to the amount of its bonds, viz, 50,000.00. Its stock was the bonds and coupons which it had issued. The mayor cast the vote which the city was entitled to under its stock. It was. No, they did not. They were only entitled to 500 votes each in voting for the officers of directory. All I know as regards the extension of the charter is that the company employed Capt. Beck to plow the ground, etc., commencing from the city towards the coast.

To 2 X-int. They were known generally to the people of this
153 country. I was county clerk at the time, and my business brought me in contact with nearly all the people of the county. The action spoken of taken by the board of aldermen in my direct answer was by resolution, as I understood, and I presume entered upon their minutes.

To X-int. 3d. They were recorded in the minutes of the city; I do not know. The bonds of the city were signed by the mayor and countersigned by the secretary under a resolution of the board of aldermen. I do not know when the subscription on the part of the city was made, but the bonds were issued in 1852. The presiding officers refused any person to vote under the city charter who had not paid his taxes. I was present at the election; I cannot state at this time the names of those who were not allowed to vote, but under the then existing charter nobody could vote unless he had paid his city tax, and this would exclude all non-property-owners from presenting themselves to vote. I believe the election was fairly conducted, and the votes of all qualified to vote under the charter were received.

To X-int. 4. The election returns were made in writing, and the result thereof entered in the minutes on the first day of January, 1851. I was present when the ballots were counted. I was county clerk at
154 that time and knew nearly all the voters of the city at that time. I have answered this by giving the *members* of electors that voted in August, '50, and August, '51, in the city limits for State officers.

To X-int. 5th. I have nothing further to state except what I stated in my direct answers, as I was not absent from the county, and of course had no means of communication except with those I met in the county.

To X-int. 6th. The bonds of said city were fairly and honestly issued, I believe, in payment of its stock. I know it was so.

To X-int. 7th. All I know of the matter took place here as I have stated in my direct answer, as I never was in New York. The railroad company sends agents North to negotiate the bonds at different times, and they were also delivered at one time to Judge Devine and Enoch Jones, as contractors, who took them North, and having failed to negotiate them took them back here to the company. No attempt was ever made by an' city officer, to my knowledge. The means and resources of the city were ample to pay the principal and interest of the bonds and all its liabilities by means of taxation; know nothing about matters in New York City relative to their knowledge of the affairs of the S. A. & M. G. R. R. with the city of San Antonio.

155 To X-int. 8th. I have stated all I know relative to the matter in my direct answer. I know that Major W. J. Clarke was elected president of the company, and that he went North and made strenuous efforts to revive the company, and some of the people had hopes that he would succeed, but it proved a failure. I know nothing about the municipal authorities of the city in the years 1856 & '57, either by ordinance or resolution, recognizing the validity of the bonds. I was an alderman during the year 1856, and have no knowledge of it. I have understood a portion of the road was built on the lower end, but I never saw it.

To X-int. 9. I do not know the plaintiff to my knowledge, and know nothing the negotiation of the bonds or coupons held by said pl'ff to him, the said pl'ff, nor what he paid for it.

SAM'L S. SMITH.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness Sam. S. Smith were taken, sworn to, and subscribed before me this sixth day of February, A. D., 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

156 3rd. Defendant read agreed copy, marked C, of proceedings of corporation of city of San Antonio, filed in said case No. 1172 on Feb'y 3rd, 1875, but used by consent as a true copy of this case, as follows: At a special meeting of the city council, Nov. 26th, 1853, M'r Callaghan arose and stated the object of the meeting—that the city bonds issued to the S. A. and Mex. G. R. R. Company were illegal, inasmuch as the vote given on the measure was not in compliance with the 12th section of said charter—when M'r Sweet offered the following preamble and resolution, which was unanimously adopted:

Be it resolved, That whereas by an act of incorporation by the legislature of the State of Texas to the San Antonio and Mexican Gulf Railroad Company, approved 5th September, 1850, it is declared as follows:

"SEC. 12TH. That the mayor and aldermen of the city of San Antonio be, and they are hereby, authorized to subscribe to the capital stock of said company, for said city, to an amount not to exceed fifty thousand dollars, as also such incorporated towns through which said railway may pass, inclusive of the town, if any, that may be its terminus with the Gulf; and to issue bonds bearing interest, or otherwise to pledge the faith of said city or towns to pay for the same. The chief jus-

157 tice and county commissioners of the several counties through which the railway may pass shall be, and they are hereby, authorized to subscribe to the capital stock of said company for their respective counties, to an amount not to exceed fifty thousand dollars, and to

issue bonds bearing interest, or otherwise to pledge the faith of their respective counties to pay the same: Provided, That the chief justice and county commissioners of said counties shall not make such subscription unless two-thirds of the qualified electors of said county or counties, at an election to be held for that purpose, shall vote in favor of such subscription being made; and chief justice of any such counties may order such election to be held, and shall give notice of the time and object of such election, by causing notice thereof to be posted up in each precinct of the county at least thirty days before the holding of such election; said election to be conducted in the manner regulating county elections, so far as the same may be applicable: Provided also, That the said mayor and aldermen of the city of San Antonio, and the towns upon the line and at the terminus of said railway on the Gulf, shall not make such subscription unless two-thirds of the electors of said city or towns qualified to vote for town or city officers, at an election to be held for that purpose, shall vote in favor of such
158 subscription being made; and the mayor of said city or towns may order such an election to be held, and shall give notice by publication in the newspaper published in the city or town, or by notice posted up in the precincts of said city or town, for at least twenty days previous to such elections being held; and said elections shall be conducted in the same manner regulating the respective city or town elections, so fare as the same may be applicable.

"Provided further, That where any such subscription shall be made, and bonds thereof be issued by the mayor and aldermen of any of said towns or city, or by the chief justice and county commissioners of any of said counties, it shall be their duty, respectively, to provide for the punctual payment of the interest that may from time to time become due upon the same, and for the payment of the principal thereof, by levying and collecting a tax on the real and personal property in the city, town, or county for which such subscription shall be made and bonds issued, which tax shall not be less than ten cents, nor more than fifty cents, on each and every one hundred dollars taxable property in town or county; and shall be assessed and collected and paid into the treasury of said city, town, or counties by which it is levied, in
159 the same manner the city or county tax in such city or towns or counties is assessed and collected, which tax shall be continued from year to year until the whole amount of the principal and interest due on said bonds shall have been fully paid and discharged; and when collected, after deducting therefrom the expenses of assessing and collecting, shall first be applied to the payment of the interest due on such bonds, and the remainder shall be applied to the payment of the principal of such bonds."

And that whereas an election was ordered to be held on the last Monday in December, 1850, and at such election but 256 votes having been polled, which not being the requisite majority required by the act of incorporation and resolutions of the board: Therefore, be it

Resolved, That we hereby declare said bonds for $50,000, issued by the said city of San Antonio, null, void and of no effect, and furthermore to order day an election to decide upon subscribing to said road.

M'r Callaghan offered the following resolution, which was adopted:

Resolved, That whereas the bonds issued to the San Antonio and Mexican Gulf Railroad Company by the city of San Antonio having been declared illegal, be it therefore further resolved, that the

160 city collector be hereby instructed to call upon the treasurer of said company and demand from him the interest illegally paid thereon.

Approved.

Attest:

MARTINEZ H. CAMPBELL, *City Sec.*

Attest:

EUGENE NAVARRO, *C. C.*

SAN ANTONIO, *Feby* 2, 1872.

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

It is hereby agreed that the foregoing two leaves contain true copies from the records of the city of San Antonio, and that the ordinances and resolutions therein contained, or any of them, may be used in evidence on the trial of the above-entitled cause the same as and in place of the original records.

It is further agreed that the said copies may in like manner be used as evidence in the case of J. C. Barnes vs. The City of San Antonio, which case is also pending in the same court. Notice to produce the original records is waived in both cases.

DAVIS and MURPHY,
T. S. HARRISON, and
E. G. HUSTON,
Att'ys for Defendants.
WALDER and UPSON,
Att'ys for Pl'ff.

161 Defendant here rested.

1st. Plaintiff then offered deposition of James R. Sweet in answer to interrogatories and cross-interrogatories, which deposition and answers were filed in said case No. 1172, but used as taken in this case by agreement.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared Ja's R. Sweet of said county, to me well known, who being by me duly sworn to true answers make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff, and the city of San Antonio is defendant, responds as follows, to wit:

To inter. 1st. I have resided in San Antonio nearly twenty-three years.

To int. 2d. Have had some knowledge of the municipal affairs of said city, having been several times since 1850 alderman and mayor; have some partial knowledge of the history of the San Antonio and Mexican Gulf Railroad Company and the management of the same; a so-called

commencement was, I think, m'de within one year of the 1s
162. of November, 1850; exact I cannot state. Some brush was cut and labor done on the presumed line of the road by Capt'n D. H. Beck, dec'a'd. I cannot state what was done within three years after the first day of November, 1850, nor that twenty miles were ever completed by said company, nor when and where. Nearly twenty years having passed, I cannot state positively as to dates.

Interrogatory 3. Answered in reply to Interrog'y No. 2.

To inter. 4th. An election was held in said city for the sole purpose of ascertaining whether said city would subscribe for stock in said company in exchange for city bonds and coupons; said proposition was voted upon, but I cannot state if it was at the time of a regular city election nor the year, but the amount was fifty thousand dollars. I do not know whether stock was issued to the city of San Antonio or not; the days' notice I do not remember; the means by notice of election were given, I think, in the city newspaper, and by handbills posted in the city. I have no knowledge of any of the electors of said city, having been refused the privilege of voting.

Int'y 5th. I neither know the number of votes cast at said election nor the number of voters or qualified electors in said city at that time.

163 Int'y 6th. Answered in answer to interrogatory No. 5.

Int'y 7th. Answered in reply to interrogatory No. 4th.

Int'y 8th. Dates I cannot swear to, as regards the bonds and coupons issued by the city of San Antonio, nor of my own knowledge their value in New York; several parties in New York bought the bonds in trade for assorted merchandise; nor do I know whether they could or could not be placed on the stock or exchange market, nor can I state whether the previous acts or doings between the city of San Antonio and said railroad company were well known in New York City, by some persons; they were those who had business transactions with Western Texas; never knew the value they sold for then or afterwards.

Int'y 9. I know nothing of the date when those bonds were in the hands of said railroad company when taken away, under what circumstances, or by whom.

X 1. I was, at different times from 1850 to 1862, one of the aldermen and twice mayor. My connexion with the San Antonio and Mexican Railroad was as a director in its early organization. I never had any contract with or was an employee of said railroad co. The city of San Antonio was considered a stockholder of said co., and to the ex-
164 tent of its subscription of fifty thousand dollars its stock was paid for in bonds bearing interest, with interest coupons attached. The mayor represented the stock owned by the city as a director, and the city of San Antonio and Bexar County, owning each fifty thousand, were, I think, the largest stockholders of the company; of the extension of time by the legislature I know, but date and terms I cannot state. I cannot state to how many persons were informed of any action of the municipal authorities of San Antonio was known, except that the meeting of the mayor and aldermen were public. Their acts were by resolution or ordinance at such meetings, and duly recorded in the book kept for that purpose.

3. Returns, notices, alluded to in connexion with that or any election, it was the custom to record in record books of the city. I know nothing of the entry on the book of said railroad company of that or any other stock, except that the company kept a book for that purpose. I know of no electors of said city having been refused the right to vote. I was

present part of the time of the election, and saw nothing of the kind. I believe the election to have been fairly conducted.

165 4. The names and number of voters are usually in possession of the city; and numbers recorded in their books. I cannot state the number of voters at that time in the city of San Antonio, though residing here.

5. I do not know the particulars alluded to. All the proceedings are matters of record, and I believe the stock subscription to have been made fairly and honestly, and the bonds issued fairly and honestly in payment of its subscription by the city authorities. I know nothing of any attempt to place said bonds upon the market in New York. I considered the resources of the city, properly managed, ample to pay its liabilities. I cannot say that any of the transactions between the railroad company and city of San Antonio were well known in New York; to persons having business connections with western Texas, they were known. I could not state what was known, or to whom, or their number, but should not consider the business public of New York as knowing anything about the matter with the exceptions before made.

8. I know nothing of the time said bonds were still in the hands of the railroad company, but consider them fairly and honestly in their hands, and never knew of their being redelivered to the city. A new president was elected, I think in 1856, and strong hopes of

166 the early building of the road entertained by the people. The municipal authorities levied a railroad tax, but in what years I cannot state, but taxes were collected to a certain extent in 1858 & 1859. I know nothing of the negotiation of the president, his agent or officers, of the bonds alluded to. The railroad tax was understood to have been levied to pay the interest of the bonds. A portion of the road was built from Lavaca to Victoria, and rolling-stock put thereon, and I believe it was subsequent to 1856.

9. I do not know the plaintiff in this case, or of the negotiation of the bonds or coupons held by him, nor the consideration he gave for them.

JA'S R. SWEET.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature, that the foregoing answers of the witness, Ja's R. Sweet, written down by him, were sworn to and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

167 2nd. Plaintiff then offered, by way of rebutting evidence, the following special acts of the legislature of Texas, viz.: Act of Feb'y 14th, 1852; that of Feb'y 13th, 1854; that of Feb'y 20th, 1856; that of Nov'r 14th, 1857; the act to receive and continue up to the month of Jan'y 1862, and the act of Feb'y 1st, 1861; to all of which the defendant excepted (see bill of exceptions of city, No. 2), but defendant's exceptions were overruled, and said acts admitted as follows:

An act supplemental to an act to incorporate the San Antonio Railway Company. Approved, September 5th, 1850.

SECTION 1st. Be it enacted by the legislature of the State of Texas, That there shall be granted to the San Antonio and Mexican Gulf Railway Company eight sections of land of six hundred and forty acres each for every mile of railway actually completed by them and ready

for use; and upon the application of the president of the company or any duly authorized agent therefore, stating that any section of five miles or more of said railway has been completed and is ready for use, it shall be the duty of the comptroller of public accounts to require the State engineer, or a commissioner to be appointed by the governor, to examine said railway, and upon his certificate that said section
168 of said railway has been completed in a good and substantial manner and is ready for use, the comptroller shall give information of that fact to the Commissioner of the General Land Office, whose duty it shall be to issue to said company land-certificates to the amount of eight sections of land of six hundred and forty acres each for each and every mile of railway thus completed and ready for use; such certificates shall be for six hundred and forty acres each, and shall be located upon any unappropriated public domain of the State of Texas, within twelve months from the issuing thereof, which date shall appear upon the face of each certificate, and upon the return of the field-notes of any survey made by virtue of any certificate thus issued, it shall be the duty of the Commissioner of the General Land Office to issue patents to said company in their corporate name; one-fourth of which said land thus patented shall be alienated by the company in six years, one-fourth in eight years, one-fourth in ten years, and one-fourth in twelve years, so that the whole of the lands thus granted shall pass from the hands of the company within twelve years from the date of the patent thus issued.

SEC. 2. This company is hereby required, at all reasonable
169 times and for a reasonable compensation to draw over their road the passengers, merchandise, and cars of any other railroad corporation which has been or may hereafter be authorized by the legislature to enter with their railroad and connect with the railroad of this company. And if the respective companies be unable to agree upon the compensation aforesaid, it shall be the duty of the president of each company to select each one man as a commissioner, and the two commissioners so elected shall choose a third in case of disagreement, neither of whom shall be a stockholder in either road or interested therein, and they shall fix the rates, which shall not be changed for one year from the time of going into effect; the said commissioners shall also fix the stated periods at which said cars are to be drawn as aforesaid, having reference to the convenience and interests of said corporations and the public who will be accommodated thereby; the right or power is specially conferred on this said company to connect and contract with any railroad company chartered by this State for the performance of like transport; and in case of disagreement between said companies, the same shall be refer'ed and settled as aforesaid, and be binding for one year as aforesaid.

170 SEC. 3. Said company shall be required to have a good and sufficient brake upon the hindmost car in all trains transporting passengers or merchandise, and also permanently stationed there a trusty and skilfull brakeman, under a penalty of not exceeding the sum of one hundred dollars for each offence, to be recovered in any court of competent jurisdiction for the benefit of the State; and said company shall cause to be placed on each locomotive engine passing over their road, a bell of the weight of at least thirty-five pounds, or a steam whistle, and the said bell shall be rung or the whistle blown at the distance of at least eighty rods from the place of crossing any highway or turnpike, and keep ringing or blowing until the engine has passed or stopped; said company shall be required to construct their railroad

with T or U iron nails: Provided, That no land shall be donated unless the company shall actually commence their road within two years, and actually complete and finish at least ten miles within three years, and that this act shall take effect from its passage.

Approved Feb'y 14th, 1852.

171 An act supplemental to an act supplemental to an act to incorporate the San Antonio Railway Company. Approved September 5th, eighteen hundred and fifty.

SEC. 1. Be it enacted by the legislature of the State of Texas, That the San Antonio and Mexican Gulf Railroad Company shall be, and are hereby, invested with the power of continuing their road from the city of San Antonio on the nearest practicable route to intersect with the Mississippi and Pacific Railroad, west of the Red Forks of the Colorado River, under the same restrictions and conditions as are imposed by the original charter to which the above-recited act is a supplement: Provided, said company shall abandon all right of branching as provided for in original charter.

SEC. 2. That in all cases where the San Antonio and Mexican Gulf Railroad shall pass through any public lands, all such lands, to the depth of three miles from the extension line of the tract, on each side thereof, shall be reserved by the State from and after the time such tract shall be fixed or designated by the actual survey; and the said lands, as the road is constructed, shall be divided into sections fronting one mile each, the road plainly marked and these reserved lands the com-

172 pany shall have the right by virtue of certificates issued in accordance with the provisions of the above-recited supplemental act, or of any other act of the legislature of this State, to cause to be located, surveyed, and patented for their use each alternate section, such section in each instance embracing a tract of land fronting one mile, pursuing an equal width to the depth of three miles, and the remaining sections shall continue the property of the State until disposed of by the legislature.

SEC. 3. That the route of said road and point of connection with the Mississippi and Pacific Railroad shall be determined by actual survey, and a map of said road exhibiting its location shall be filed with the secretary of state within twelve months after the survey and location of the route of the Mississippi and Pacific Railroad through Texas, or in default thereof all the rights and privileges granted by this supplemental act shall cease and no longer exist.

SEC. 4. That in case the San Antonio and Mexican Gulf Railroad Company shall accept the benefits of this act, they shall no longer have the privilege of branching said road; and if forty miles of said

173 San Antonio and Mexican Gulf Railroad be not completed and equip'ed within two years from the passage of this act, their said charter shall become null and void, and said company shall forfeit all their rights and privileges.

SEC. 5. That the franchise of said San Antonio and Mexican Gulf Railroad Company, in case they accept the benefits of the provisions of this supplemental act, shall cease and determine at the end of ninety-nine years, and said company shall not be allowed to receive any lands by virtue of the provisions of the above recited supplemental act, or of this act, after ten years from and after the passage of this act.

SEC. 6. That this act take effect and be in force from and after its passage.

Approved Feb'y 13th, 1854.

An act supplemental to an act to incorporate the San Antonio and Mexican Gulf Railroad, approved September 3rd, eighteen hundred and fifty, and the supplements thereto.

SECTION. 1. Be it enacted by the legislature of the State of
174 Texas, That the time for the completion of the first section of twenty-five miles of the San Antonio and Mexican Gulf Railroad be, and the same is hereby, extended till (until) the first day of July, eighteen hundred and fifty-seven: Provided, said company shall thereafter be compelled to construct at least twenty-five miles each and every year, until the entire road is completed, under the penalty of forfeiture declaimed in the original and supplemental charter of said company.

SEC. 2. That hereafter it shall not be lawful for the county court of Bexar County proper to levy and collect any tax on real estate without the limits of Bexar County to pay the interest on any railroad bonds heretofore issued by said county, any law to the contrary notwithstanding.

SEC. 3. That hereafter the directors of said company shall never exceed thirteen nor less than seven, and that this act take effect from and after its passage.

Approved 20th February, 1856.

175 An act to revive and continue in force, and supplemental to and amendatory of an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved September 5th, 1850, and the several supplemental and amendatory acts concerning said railroad.

SECTION 1. Be it enacted by the legislature of the State of Texas, That an act entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad Company," approved September 5th, 1850, and the several supplementary and amendatory acts concerning said railroad, be, and the same are hereby, revived and continued in force, in accordance with the provisions of said original act, and acts supplementary and amendatory thereto, and on the terms and conditions hereinafter mentioned: Provided, That this act of revival shall not be so construed as to render liable any person or persons for the payment of any unpaid balance of the capital stock of said company who would not have been so liable without the passage of this act.

SEC. 2. That the eighteenth section of an act entitled "An act to encorporate the San Antonio and Mexican Gulf Railroad Company,"
176 approved September 5th, 1850, be so amended that the same shall hereafter read as follows, to wit: That at least twenty-five miles of said railroad shall be completed in running order by the 1st day of January, 1860; otherwise this charter shall be null and void.

SEC. 3. That the proviso to the third section of an act entitled "An act supplementary to an act to incorporate the San Antonio Railway Company, approved September 5th, 1850," approved February 14th, 1852, be so amended so that the same shall hereafter read as follows, to wit: That no land shall be donated in accordance with the provisions of this act unless five miles of said road shall be completed on or before the last day of January, 1858.

SEC. 4. That the fourth section of an act entitled "An act supplementary to an act to incorporate the San Antonio Railway Company, approved September 5th, 1850," approved February 13th, 1854, be so amended that the same shall hereafter read as follows, to wit: That in case the San Antonio and Mexican Gulf Railroad Company shall accept

the benefits of this act they shall no longer have the privilege of
177 branching said road; and if twenty-five miles of said road be not completed and equipped on or before the first day of January, 1860, then said charter shall become null and void, and said company shall forfeit all their rights and privilege.

SECT. 5. That the first section of the act entitled "An act supplemental to an act to incorporate the San Antonio and Mexican Gulf Railroad," approved September 5th, 1850, and the supplements thereto, approved February 20th, 1856, be and the same are hereby repealed.

SEC. 6. That if said San Antonio and Mexican Gulf Railroad Company shall complete twenty-five miles of their road on or before the 1st day of January, 1860, they shall be entitled to receive therefor sixteen sections of land per mile, and the provisions of an act entitled "An act to encourage the construction of railroads in Texas by donations of land," approved January 30th, 1854, and upon the completion of twenty-five miles of said road within each year after the first day of January, 1860, the said company shall be entitled to receive sixteen sections of land per mile therefor under the provisions of said act until the same be repealed or expire by limitation.

SEC. 7. That said company shall be entitled to all the benefits
178 of an act entitled "An act to provide for the investment of the special school fund in the hands of railroad companies incorporated by the State," approved August 13th, 1856: Provided, said Railroad Company in all things shall comply with the terms and conditions of said law as it now exists, or as it may hereafter be amended by the legislature of the State of Texas.

SEC. 8. That the town of La Vaca, on Matagorda Bay, be, and the same is hereby declared to be the eastern terminus of said San Antonio and Mexican Gulf Railroad.

SEC. 9. That the capital stock of said company for the present shall not exceed one million dollars, which may be increased from time to time by consent of two-thirds of the stockholders in amount so as not to exceed two million five hundred thousand dollars.

SEC. 10. That this act take effect and be in force from and after its passage.

Approved November 14, 1857.

An act supplemental to an act and amendatory of an act entitled An act to incorporate the San Antonio and Mexican Gulf Railroad Company, and supplemental to and amendatory of the above recited act.

179 SECTION 1. Be it enacted by the legislature of the State of Texas, that the time for the completion of the second section of twenty-five miles of the San Antonio and Mexican Gulf Railroad Company be, and the same is hereby extended to the first day of January, 1863, anything in the original act of incorporation, or in the several acts supplemental to and amendatory thereof, to the contrary notwithstanding: provided, that the past failure of said company to have completed any section or any given extent of road within the time prescribed in said original act of incorporation, or in any of the several acts supplemental to and amendatory thereof, shall not be so construed as to deprive said company of any of the benefits arising under said original act of incorporation and the several acts supplemental to and amendatory thereof, or arising under any general or special law of the State, in the same manner as if said company had made no such failure.

SEC. 2. That this act take effect and be in force from and after its passage.

Approved February 1st, 1861.

180 The case was then closed.

We agree that the above and foregoing pages contains a true and correct statement of evidence that was offered and admitted by the court on the trial of the above entitled cause at the January term, A. D. 1875, of the circuit court of the U. S. for the western district of Texas.

DAVIS & BRITTON,
For Defendant.
WALLDER & UPSON,
A. M. JACKSON,
For Pff.

W. B. WOODS,
Judge.

181 Petition for writ of error is endorsed to wit: City of San Antonio vs. J. C. Barnes. Petition for writ of error allowed. T. H. Duval, U. S. judge. Filed May 1, 1875. M. Hopkins, clerk.

Petition for writ of error.

In the U. S. circuit court for the western district of Texas.

THE CITY OF SAN ANTONIO, PLAINTIFF IN ERROR,
vs.
J. C. BARNES, DEFENDANT IN ERROR. } 1171.

To Matthew Hopkins, esqr., clerk of the circuit court of the U. S. for the western district of Texas:

This petition of the corporation of the City of San Antonio, a corporation within the county of Bexar, and within the said district, respectfully represents that petitioner was defendant in a certain suit at law in the circuit court for said district, lately pending in said court, and numbered 1171 on the docket of same, wherein J. C. Barnes was plaintiff; that at a term of said court begun and held at Austin, Texas, on the first Monday in January, A. D. 1875, the said suit was tried; and during said term, to wit, on the 8th day of February, A. D. 1875,
182 a judgment was rendered by said court in said suit, wherein was adjudged to said J. C. Barnes, as such plaintiff, and against your petitioner, the sum of money claimed by said Barnes in his pleadings, to wit, the sum of $10,122.00, and also all costs about said suit expended, but the amount of said costs is unknown to petitioner.

Your petitioner further represents that she is aggrieved by the action, orders, findings, and judgment of said court in said suit, and that she is informed and believes that said action, orders, finding, and judgment are in many respects erroneous, and have operated to deprive your petitioner of her just and legal rights.

Wherefore your petitioner prays that a writ of error issue to remove said suit and all proceedings therein to the Supreme Court of the United States, for the purpose of correcting the many errors committed in said suit to the great grievance of petitioner; and to this end, that citation and copy of this petition, in proper form, issue to the marshal of the United States for the said western district of Texas for service on said Barnes.

And petitioner further prays that, after due proceedings had before the Supreme Court of the United States, the said judgment may in all respects be reversed and petitioner reinstated in her just and legal rights.

Petitioner also prays for all general relief to which in law
183 and justice she may be entitled.

DAVIS & BRITTON,
For Plaintiff in Error.

And afterwards bond for writ of error was filed (endorsed to wit: City of San Antonio vs. J. C. Barnes. Bond in writ of error. Bond approved. T. H. Duval, U. S. judge. Filed May 1, 1875. M. Hopkins, cl'k,) and is in words to wit:

In the Supreme Court of the United States. In error to the circuit court, western district of Texas.

THE CITY OF SAN ANTONIO
vs.
J. C. BARNES. } No. 1171.

Know all men by these presents, that we, the City of San Antonio, Texas, as principal, and J. H. Kampman and Edward Braden, as sureties, are held and firmly bound unto the above J. C. Barnes in the sum of five hundred dollars ($500) to be paid to the said J. C. Barnes, his executors, or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals (using scrawls for seals) this ninth day of April, A. D. eighteen hundred and seventy-five.

184 The condition of the above bond is such that whereas the above City of San Antonio hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the suit of J. C. Barnes vs. The City of San Antonio, No. 1171 on the law docket of the circuit court of the U. S. for the western district of Texas (being the 5th circuit): now, therefore, if the above-named City of San Antonio shall prosecute her said writ of error to effect and answer all costs if she shall fail to make good her plea, then this obligation to be void; otherwise to be and remain in full force and virtue.

J. H. FRENCH, [SEAL.]
Mayor City of San Antonio.
J. H. KAMPMAN. [SEAL.]
ED. BRADEN. [SEAL.]

THE STATE OF TEXAS,
County of Bexar:

Before me, H. Mac Cormack, U. S. commissioner western district of Texas, personally appeared Ja's H. French, mayor city of San Antonio, J. H. Kampman, and Edward Braden, all to me well known, who to me acknowledged that they and each of them signed, executed, and delivered the foregoing instrument of writing for the uses, purposes, and considerations therein set forth.

To certify which I hereunto set my hand and affix the impress of my official seal, at office in San Antonio, Texas, this 9th day of April, A. D. 1875.

[L. S.]

H. MAC CORMACK,
U. S. Com. W. Dist. of Texas.

185 THE STATE OF TEXAS,
County of Bexar:

I, H. Mac Cormack, U. S. commissioner western district of Texas, do hereby certify that I am personally acquainted with J. H. Kampman and Edward Braden, whose genuine signatures appear at the foot of the foregoing bond, as sureties thereto; that they are respectable and wealthy citizens of said county and State, and that they are solvent and good sureties.

In testimony whereof I hereunto set my hand and the impress of my official seal, at office in San Antonio, this 9th day of April, A. 1875.

[L. S.] H. MAC CORMACK,
U. S. Com. W. Dist. of Texas.

Writ of error is endorsed: "In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. J. C. Barnes, def't in error. Writ of error to Supreme Court of the United States. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k circuit court U. S., Austin;" and is in words to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin, in said district, greeting:

186 Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court before you, between J. C. Barnes, who is plaintiff, and the City of San Antonio, who are defendants, No. 1171, on the docket of said circuit court of the United States, sitting at Austin in said district, a manifest error hath happened, to the great damage of the said city of San Antonio, who is plaintiff in error herein, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five, and
187 seal of our said circuit court at Austin, in the one hundredth year of the Independence of the United States.

[L. S.] M. HOPKINS,
Clerk of the Circuit Court of the United States, West. Dist. of Texas, at Austin.

Allowed.

T. H. DUVAL,
U. S. Judge.

Citation in error, (endorsed, to wit: In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. J. C. Barnes, def't in error. Citation in error. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k); and is in words, to wit:

United States of America to J. C. Barnes, or his att'ys of record, Waelder & Upson, or A. M. Jackson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin, wherein the City of San Antonio is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned
188 should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five.

[L. S.] T. H. DUVAL,
U. S. Judge.

Test with seal of court at Austin this 19th day of August, A. D. 1875.

M. HOPKINS, *Clk.*

The marshal' return of service is endorsed on the writ, as follows:

Received in office August 19th, and executed August 20th, 1875, by delivering to A. M. Jackson, att'y of record of the defendant in error, a true copy of this citation in error.

THOMAS F. PURNELL,
U. S. Marshal.

AUG. 20TH, 1875.

189 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing one hundred and eighty-eight written and fractional pages contain a full, true, and correct transcript of the record of case No. 1171, entitled "J. C. Barnes vs. City of San Antonio," as it appears of file and record in this court.

In testimony whereof I have hereunto set my hand and the impress of the seal of said court, at Austin, this 29th day of September, A. D. 1875.

[SEAL.] M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 245. The City of San Antonio, plaintiff in error, vs. J. C. Barnes. W. Texas C. C. U. S. Filed 18th October, 1875.



Supreme Court of the United States.

October Term, 1877.

THE CITY OF SAN ANTONIO,
PLAINTIFF IN ERROR,
vs.
J. C. BARNES.

No. 245.

Brief in reply by Plaintiff in Error.

The defendant in error seems to have taken the statement of his claim "to recover the amount of two bonds "and certain coupons for interest attached to them" from the record in Mehaffey's case; whereas the petition claims for 180 coupons at $35 each, "with interest thereon * * "from the days and dates when the same respectively be- "came due and payable." "Before said coupons, or any "part thereof, became due and payable, they were for a "valuable consideration duly negotiated to, purchased by, "and are now the property of your petitioner. Said cou- "pons were made * * * on *nine* 7 per cent. bonds * * "numbered 17, 18, 19, 20, 21, 22, 25, 26, and 27, * * * "and amount in the aggregate to the sum of six thousand "three hundred dollars, exclusive of the interest due upon "each."

See Petition, Record, pp. 2, 3, and Judgment, p. 14.

The principal of the judgment is $6,300 coupons or interest, to which the court adds $3,822 for interest on interest; together, a total of $10,122.

There is no proof whatever in this record of the when, how, where, and for what consideration the plaintiff Barnes acquired the possession of these coupons. Nor can we find any information of the present holder of the bonds from which the 180 coupons were cut.

In our opponent's brief it is stated "there were no findings of fact in the court below entered or made part of the record other than the opinion of the judge who tried the cause. It is assumed, therefore, for the purposes of this argument, that the finding of the court below, that the defendant in error was the *bona fide* holder for value of the securities mentioned in his petition, is not here for review, and that that fact is established beyond peradventure by the submission to the judge and his findings on the subject. It is not mentioned in the bills of exceptions, and there is nothing to bring to the notice of the court any error in that decision."

We submit that such a case as this cannot be so readily and so summarily disposed of; and that the above paragraph exhibits two manifest errors, one of fact and the other of law.

There was a statement of fact in the court below, entered AND made part of the record agreed upon by the respective counsel and W. B. Wood, judge, "as a true and correct statement of evidence that was offered and admitted by the court on the trial." It is spread over many pages from 23 to 79, inclusive, and this statement cannot be legally ignored.

The error of law is more serious. Whether Barnes is the *bona fide* holder for value before maturity of the coupons is not a question of fact but a question of law, which,

by no possible contrivance, can be judicially solved for the appellate court by the circuit court. These coupons have no existence but in the statement of facts. The allegation of *bona fide* holdership before maturity for value was made by the plaintiff and denied by the defendant, but no proof of it was made, and the case of the plaintiff therefore failed.

As to the validity of the act under the constitution of Texas, it is shown in the opening briefs filed for plaintiff in error that the decisions of the supreme court of Texas were against it.

The arguments of counsel of defendant in error, founded on the decisions of this court and that of the supreme court of Illinois, are inapplicable.

The case of Scotland *vs.* Thomas, (94 U. S., p. 682,) will be found, on examination, not to go the length to which it is sought to be extended.

The case of Supervisors *vs.* The People, (25 Illinois, 181,) cannot assist the court in coming to a conclusion here. That decision was rendered in 1860, under the provisions of the State constitution of 1848, the provision of which on this subject was that "no private or local law shall "embrace more than one subject, and that shall be ex- "pressed in the title," (Const. of 1848, sec. 23, Art. 3,) while the act to incorporate the Rock Island and Alton Railroad Company, section 18, says, "this act shall be "deemed a public act, and shall be favorably construed," &c.

Respectfully submitted.

DURANT & HORNOR,
for Plaintiff in Error.

18th March, 1878.

IN THE

Supreme Court of the United States

No. 245.

THE CITY OF SAN ANTONIO,
Plaintiff in Error,

versus

J. C. BARNES,
Defendant in Error.

Brief of Counsel for Defendant in Error.

ROBERT SEWELL,
New York,
Of Counsel for Defendant in Error.

NEW YORK:
Evening Post Steam Presses, 16 Broadway, corner Pine-st.
1878.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

In the Supreme Court

OF THE UNITED STATES.—No. 245.

THE CITY OF SAN ANTONIO,
Plaintiff in Error,

vs.

J. C. BARNES,
Defendant in Error.

Brief of Counsel for Defendant in Error.

Statement of Facts.

This is a writ of error to the Judges of the Circuit Court of the United States, in the Fifth Circuit in and for the Western District of Texas, and its object is to correct certain errors alleged to have been committed in the trial of an action at law, in which the defendant in error, J. C. Barnes, was the plaintiff, and the City of San Antonio was the defendant. The action below was commenced by a petition of the plaintiff, which was filed on the 2nd May, 1871, and upon which a citation, issued on the 3d of May, 1871, to recover from the City of San Antonio the amount of two bonds and certain coupons for interest attached to them issued by that municipal corporation on the 1st March, 1852, and which

at the time of the filing of the petition remained unpaid, and of which the plaintiff below was a *bona fide* holder for value, the coupons, and the bonds to which they are annexed, being negotiable instruments well known and the question of their negotiability being well settled by the decisions of the courts (see Error Book, pages 2 and 3). Several pleadings were put in by the defendant, including demurrers, pleas in abatement, pleas in bar and an answer, which latter document appears to have included in it the demurrers and the pleas tendering issues of fact, and the case was continued until the 5th February, 1874, when the case was finally submitted to the court below on the law and the facts, and on the 8th February, 1875, the court delivered its decision as well upon the demurrers as upon the questions of facts, all of them in favor of the plaintiff below, and assessed his damages at $10,120 for which judgment was ordered (Error Book, page 14).

The learned judge below also filed his written opinion, disposing at length of the questions which he had decided. giving his reasons for his judgment. This will be found at pages 15 to 19 of the Error Book.

Afterwards, bills of exceptions, numbered 1, 2, 3, and 4 were filed on February 15th, 1875, and attached to the record in this case, and are brought up here with the record for review by this court. The bills of exceptions will be found on pages 20, 21, and 22 of the Error Book.

It is alleged for error in the court below by these several bills of exceptions.

First.—That the act to incorporate the San Antonio Railroad Company approved September 5th, 1850, was improperly admitted as evidence in the case because it contravened Section XXIV, Article Seven of the Constitution of Texas in this; that the purposes of the Twelfth Section of the Act, which authorized the issue of these bonds by the City of San Antonio are not embraced in the purposes set forth in the title of the Act.

Second.—That the name of the company in the title of the Act differed from the name of the company as incorporated in the body of the Act,

Third.—That several of the Acts of the Legislature of Texas were improperly admitted as evidence upon the trial of the cause.

Fourth.—That the pleas in abatement and special demurrers have been improperly overruled by the court below.

Fifth.—That the court below had improperly admitted evidence, being portions of the answers of certain witnesses alleged to contain conclusions of law.

It will appear by a careful reading of the Error Book that all these exceptions are trivial except that which goes to the constitutionality of the Act of the Legislature of Texas incorporating the San Antonio Railroad Company, approved September 5th, 1850, under which the bonds and coupons which form the subject matter of this suit, were issued.

It appears that the act referred to remained upon the statute books of Texas, and has been acted under by the City of San Antonio, which had subscribed for stock in the railroad company under the provisions of that act, and had issued the bonds in question in payment of the stock aforesaid. It also appears that until 1869 no decision on the question of the constitutionality of this act with respect to the particular portion of it now assailed had been made by the Supreme Court of Texas, which is the court of last resort in that State. Prior to the year 1869, the question of the constitutionality of the act had, indeed, been discussed in the case of SAN ANTONIA *against* JONES, reported in the 28th Texas Reports, at page 19, where a general decision was given that the act was constitutional in every respect. The precise point, however, that section twelve was not constitutional because its purposes are not properly included in the title of the act, was not decided by that tribunal until 1869, when, in the case of THE CITY OF SAN ANTONIO *vs.* LANE, reported in the 32d Texas Reports, page 405, the precise question as to the constitutionality of section twelve, allowing municipal corporations along the line of the road to subscribe to its stock and issue bonds therefor, was raised, fully discussed, and, as it was then supposed,

definitely settled in favor of the constitutionality of the act.

Two years later, however, a new Supreme Court, created under a new Constitution, re-examined the question in the case of THE CITY OF SAN ANTONIO *vs.* GOULD, reported in the 34th Texas Reports, at page 49, and in that case did reverse the former ruling of the same tribunal, and decided that section XII. was inoperative and void, as being an infraction of that provision of the Texas Constitution which requires that the purposes of an act shall be stated in its title. Thus, it will be seen that from 1850, at the time of the passage of the act, down to the year 1871, it had remained the apparent authoritative expresion of the legislative will of the State of Texas, published in its laws, incorporated in its jurisprudence and approved by the solemn decision of the highest court of judicature in that State in the year 1869. Since then another case has been taken to the same tribunal, and it is understood that the latest ruling above referred to has been approved of, and that, at least for the present, the Supreme Court of Texas holds the act to have been unconstitutional and void, so far as the twelfth section is concerned.

There were no findings of fact in the court below, entered or made a part of the record other than the opinion of the judge who tried the cause. It is assumed, therefore, for the purposes of this argument, that the finding of the court below, that the defendant in error was the *bona fide* holder for value of the securities mentioned in his petition, is not here for review, and that that fact is established beyond peradventure by the submission to the judge and his findings on the subject. It is not mentioned in the bills of exceptions, and there is nothing to bring to the notice of the court any error in that decision.

The argument will proceed, therefore, on the supposition that it appears upon the record that the plaintiff was such *bona fide* holder for value before the maturity of the bonds and several coupons mentioned in his petition, as by him alleged, which fact was in issue below, and must be held to have been decided in favor of the defendant in error. These coupons were all due and unpaid at different periods prior to the commencement of the action, and long prior to the

first decision of the Supreme Court adverse to the constitutionality of the Act in 1871, some of them coming due between 1869 and 1871, and many of them falling due prior to either of those dates.

Point First.

I may well commence the argument of this case by quoting the words of Mr. Justice Swain, in Gelpcke *vs.* City of Dubuque, 1st Wall, 202: "The case resolves itself into the question of the power of the City to issue bonds for the purpose stated." If the City had the power to issue these bonds, and issued them under that power, and they came into the hands of the defendant in error as a *bona fide* holder without notice of any defense to them or of any irregularities in their issue, it is understood to be the law, and is relied upon in this argument as the law that he can recover, notwithstanding such irregularities and notwithstanding any defenses which the City might have to them in the hands of a person other than a *bona fide* owner.

Commissioners *v.* Clark, 94 U. S., 287.
Burlington *v.* Beasely, 94 U. S., 312.
Coloma *v.* Eames, 92 U. S., 484.

Was the Act of the Legislature of Texas authorizing the City of San Antonio to issue these bonds constitutional? That we presume to be the question in this case. The Act was passed September 5th, 1850, and its title is "An Act to incorporate the San Antonio Railroad Company."

It provides in the usual way for the incorporation of the company, the control of its affairs, grants it power to build a railway and all the incidental powers to such a business, and then in Section twelve provides that the Mayor and Aldermen of the City of San Antonio are authorized to subscribe to the capital stock of said company for said City to

an amount not to exceed $50,000, and also such incorporated towns through which said railway may pass inclusive of the towns, if any, that may be its terminus on the Gulf, and to issue bonds bearing interest, or otherwise to pledge the faith of the city or towns to pay for the same. The Act itself will be found in the Error Book at page 23 and the following pages.

It is claimed by the plaintiff in error here that this section of the Act is repugnant to that provision of the Constitution of Texas, which declares that every law shall embrace but one object and that object shall be expressed in its title. It will be contended for here that the decision of the Supreme Court of Texas in the recent case not reported, and in the case of *The City of San Antonio against Gould*, reported in the 34th of Texas Reports, 49, having decided this point adversely to the constitutionality of the Act that this court is bound by such decision and that the question is not open to discussion. Upon that point we suppose that the doctrine of this court is that it will follow the latest settled adjudication of the Supreme Court of the State on the question of the constitutionality of the law of a State, but that it is not and cannot be expected that this court will follow every oscillation of opinion expressed in the decisions of such Supreme Court of a State, from whatever cause arising, that may possibly occur, and that the sound rule is that heretofore declared by this court, as follows: "The sound rule is that if a contract, when made, was valid by the laws of the State as then expounded by all departments of the government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of the Legislature or decision of its courts altering the construction of the law."

Ohio Life Company *vs.* DeBolt, 16 Howard, 432.

This doctrine was again applied by this court in *Gelpcke* vs. *Dubuque*, 1st of Wall, 206.

In *Havemeyer* vs. *The Iowa Company*, 3d Wall, 294; in *Thompson* vs. *Lee County*, 3d Wall, 327, and *City* vs. *Lamp-*

son, 9th Wall, 477, and in the still more recent case of [illegible] vs. *The Supervisors*, on the 16th Wall, 678.

These decisions, it is respectfully submitted, dispose of the question as to whether or not this court is precluded by the judgment of the Supreme Court of Texas as to the constitutionality of the act.

There is nothing peculiar in this provision of the Constitution of Texas. There is nothing in it which would come within the doctrine, that in matters pertaining to it, the Supreme Court of that State should be the sole arbiter. This is a question pervading the jurisprudence of the United States; it is a common provision in all the constitutions, and it is of the utmost importance that there should be one and only one rule of construction applied to all of them.

I will not dwell longer upon this point, but will assume that the question in this case is an open one, and that unless upon examination the last decision of the Texas court is found to be based upon principles of equity and justice, this court will not be bound by it. It is not one of an unbroken series tending in the same direction.

Town of Elwood *v.* Marcy, 92 U. S., 289.

Part Second.

But the act is constitutional. The reasoning of the court in the first cited decision, to wit, 32d of Texas, 405, is consonant to reason and to justice. The constitutional limitation was meant to correct an evil, and to prevent the loose practice which had crept into the Legislatures of the several States in adding to the titles of bills the general words "for other purposes," and then inserting in the bodies of the acts measures of the most incongruous character, and totally departing from the general scope of the bill as heralded in its title. The intention of the constitutional enactment was,

that neither the members of the Legislature nor the people should be misled by the title.

Sun Mutual Insurance Company *vs.* Mayor of New York, 8th N. Y., 253.

The intent of the provision was to prevent the union of incongruous matters, and of objects having no connection or relation, and to prevent surprise in legislation by having matter of one nature embraced in a bill whose title expressed another.

State *vs.* County Judge, 2d Iowa, 282.
O'Connor *vs.* Mayor of New York, 5 N. Y., 293.

It was thus the settled purpose of these provisions to prevent "log-rolling" legislation, to prevent fraud and surprise. It was required by the Constitution that every act should have but one end or aim or general intent or object, and that that end or aim or object should be expressed in its title; not that each and every provision of the act tending towards the general aim or object of the law should be set forth in the title; for then the title would be almost as long as the act and would itself need a title to facilitate reference to it. Thus it was early held that the title "An Act to establish a police government for the City of Detroit," was not objectionable for its general title, and that all matters properly connected with the establishment and efficiency of such a government, including taxation for its support and the establishment of courts for the examination and trial of offenders might be included in the bill.

People *vs.* Mahany, 13th Mich., 495.
Morford *vs.* Unger, 8 Iowa, 82.
Whiting *vs.* Mount Pleasant, 11 Iowa, 482.
The Mayor, etc. *vs.* The State, 30 Maryland, 112.

The generality of the title is, therefore, no objection so long as it is not made a cover to legislation incongruous in

itself and which, by no fair intendment, can be considered as having a necessary or proper connection.

Cooley on Constitutional Limitations, section 144.

Indiana Central R. R. Company *vs.* Potts, 7 Ind., 681.

People *vs.* Briggs, 50 N. Y., 553.

The tendency is towards a liberal construction of this constitutional limitation; any other construction would necessarily be an impediment to legislation and would place such embarrassment before the work of making laws that almost every act would be subject to its influence. Thus, it has been repeatedly held in furtherance of this doctrine that the repeal of a statute on a given subject is properly connected with the new statute onthe same subject, and that, therefore, a repealing clause in the new statute is valid, notwithstanding the title is silenton that subject.

Gubbard *vs.* The R. R. Company, 11 Indiana, 325.

Gilford *vs.* Komer, 18 Barbour, 640.

And in this connection it has been held that an act to incorporate a railroad company, which is the very case now at bar before your Honors, may, as an incident to this object, authorize counties along its line to subscribe to its stock, or otherwise aid in the construction of the road. This case may fairly be said to be on all fours with the case that we are discussing, to be an exact, particular and highly respectable authority in favor of the propositions which I am now engaged in submitting.

Supervisors *vs.* The People, 25 Illinois, 181.

So, too, it has been been held that "an act to incorporate a Fireman's Benevolent Association" may lawfully include in its title provisions for levying a tax upon the income of foreign insurance companies for the benefit of that corporation.

Fireman's Association *vs.* Loundsbury, 21 Ill., 511.

So an act to regulate the proceedings of a County Court was held to properly embrace a provision giving an appeal to the District Court and to regulate the proceedings of the District Court upon the appeal.

Murphy *vs.* Monard, 11 Texas Reps., 673.

So in an act to change the boundaries of existing counties, it was held that the subject of forming new counties out of those existing was properly included in the act.

Haggard. *vs.* Hawkins, 14 Indiana, 299.
Duncombe *vs.* Prindle, 12 Iowa, 1.

In Tadlock *vs.* Eccles, 20 Texas, page 792, it was said that it could not have been meant in the Constitution by the word "object," that it should be understood in the sense of provision. "Various and numerous provisions," said the Court, "may be necessary to accomplish the one general object which an act of the Legislature passes." In a recent case the Supreme Court of Missouri held, that the power thus conferred on the County Courts to subscribe to the capital stock of a railroad company is a privilege granted to a company.

Smith *vs.* Clark County, 54 Mo., 58.

The last cited case is also a case exactly in point. That action was on coupons detached from bonds issued by the county to the Alexandria & Bloomfield Railroad Company. There was a provision contained *in the railroad charter* authorizing the county court of any county in which any part of the route of said railroad may be, to subscribe to the stock of the company.

This case has received the sanction of the approval of this court. In Scotland *v.* Thomas, 94 U. S., 682, it is expressly ruled that the grant in the railroad charter of power to the municipalities along its line to subscribe for its stock and issue bonds, was a privilege granted to the railroad company.

This goes directly to the root of the matter. If it be a

privilege to the railroad company, it was within the object stated in the title of the act. It is not to be supposed that every known means of accomplishing the object in view, is not within the power of the Legislature. That body is the judge of what means it may use, and any agency tending to carry out the object in view may be adopted.

State *v.* Union, 33 N. J., 351.

Thus, it has been held that a provision in an act incorporating a college, which prohibits the sale of ardent spirits within a distance of four miles, although the subject is not named in the title of the bill, is not unconstitutional under this provision.

O'Leary *v.* Cobb, 28 Illinois, 554.

As was properly stated by the court in New York, an act is not at variance with this article of the Constitution, because, in addition to the object provided for in a bill, it also provides the means for doing it. That may very properly, if not necessarily, be included therein.

People *vs.* Lawrence, 36 Barbour, 177 and 190.

It is only where subjects embraced in the statute and not expressed by its title and have no congruity or proper connection that the evil sought to be prevented by this section can arise.

De Witt *vs.* San Francisco, 2 Cal. Reps., 299.

The object of the constitutional provision was to secure some congruity and connection in the subjects embraced in the statute.

Pierepont *vs.* Cranch, 10 Cal. Reps., 315.
Washington *vs.* Page, 4 Cal. Reps., 388.

Says the learned author of "Dillon on Municipal Corporations," at section 28 of that valuable work, where many authors are referred to as substantiating the doctrine. "This provision has been frequently considered to require only the general or ultimate object to be stated in the title, and not

the details by which the object is to be attained. Any provision calculated to carry the declared object into effect is unobjectionable, although not specially indicated in the bill."

Thus it was held in New York that an act for the relief of the creditors of a railroad company did not infringe this provision, because after directing the sale of the real and personal estate of the railroad company, it also provided for the distribution of the proceeds, and authorized the erection of another corporation for the purpose of purchasing the property.

Mosher *vs.* Hilton, 15 Barbour, 657.

A similar provision in the Kentucky Constitution, is said by the courts not to require a technical but a reasonable construction, and that no provision of a statute relating directly or indirectly to the subject expressed in the title having natural connection therewith, and not foreign to the same, shouldbe deemed within the constitutional inhibition.

In that case last cited Mr. Justice Styles says: "In Phillips *vs.* Covington & Cincinnati Bridge Company, the title of the act was 'An Act to amend the Charter of the Covington & Cincinnati Bridge Company.' It was objected that the section thereof which authorized the City of Covington to take stock in the Bridge Company was incongruous with the title, and therefore void. It was held otherwise, and the section was sustained because it related to the Bridge Company the subject of the bill. And the same principle was in effect enunciated in Childs *vs.* Drake and Ohio Turnpike Company *vs.* Ballard."

Johnson vs. *Higgins*, 3 Metcalf, 566–569.

In passing upon a precisely similar provision the Supreme Court of Michigan said: "To require that every end and means necessary to the accomplishment of this general object should be provided for by a separate act would not only be senseless but would render legislation impossible."

People vs. *Mahany*, 13 Mich., 495.

But it is unnecessary further to exhaust the patience of the court by the citation of cases sustaining the general doctrine for which we contend. Judge Cooley observes in his learned treatise on constitutional law with respect to this part of the constitutional provision that "there has been a general disposition to construe the constitutional provision liberally rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficent purposes for which it is adopted," and a long series of cases are cited at page 146 of that book, to which the attention of this court is respectfully submitted. It will be fonnd that the construction for which I contend is the settled rule of interpretation in all the States, and that the Supreme Court of Texas stands unsupported by authority in its recent reversal of its former rulings on this subject.

Point Third.

The circumstances of this case raise a strong presumption in favor of the constitutionality of this act. Apart from the general principles, upon which I rely, apart from the authoritative decisions which I have cited, there is still another consideration which should commend itself to the consideration of the court in the discussion of this question.

It is an axiom in American constitutional law, that continued recognition of the validity of the act and the judicial recognition of its authority should uphold actual contracts entered into under the faith of such recognition and such authority. It was said in *Stewart* vs. *Laird*, in the first of Wheaton, 351: "It is sufficient to observe that practice and acquiescence under it for a period of seventeen years, commencing with the organization of the judicial system, affords an irresistible answer, and has, indeed, fixed the construction. This practical exposition is too obstinate to be shaken or controlled, because the question is at rest, and ought not to be disturbed."

In the case of *Prigg* vs. *Pennsylvania*, 16 Peters, 621, Judge Story, speaking of a law the constitutionality of which had been acquiesced in for many years, said: "Such uniform recognition would entitle it to be considered at rest, unless the interpretation of the Constitution is to be delivered over to interminable doubt throughout the whole progress of legislative and governmental operations.

Although the opinion of English judges upon questions of American constitutional law cannot be cited as of much authority, yet the principles which are to be applied to the construction of our constitutions are the same principles which the English judges have been accustomed to apply to the construction of laws and statutes from time immemorial, and Lord Eldon, no mean authority, said, in a case reported in 2d Broad & Bing., 595: "The most enlightened judges who ever sat in Westminster Hall always gave the greatest weight to what obtained in practice." So Lord Ellenboro' declared, in 15th East, 223, that it was "not from decided cases only where the points had been raised upon argument that we should collect the rules of law, but also from the practice without objection made." In the case of *Johnson* vs. *Gumar*, 2d Cowen, at page 567, the court declared that continued practice would amount to a construction, and cited *McKeen* vs. *Delancey's Lessee*, 5 Cranch, 32.

But the cases which sustain this doctrine are too numerous to advert to them all at great length. A long list of them will be found in "Cooly's Constitutional Limitations" at page 69, which all go to this doctrine of protection to what has been done in reliance upon the decisions of the courts and the acts of the Legislature. They all say that in cases of doubt it is conclusive. The rule, as announced by Judge Cooly, as the result of them all is "If the question involved is really one of doubt, the force of the legislative judgment, especially in view of the injurious consequences that may result from disregarding it is fairly entitled to turn the scale in the judicial mind."

This is laid down as his conclusion upon all the cases as a general canon of interpretation of American constitutions.

Point Fourth.

But if this court should be of opinion that the Constitution of Texas does really inhibit the Legislature from passing an act for the incorporation of a railroad, and in it provide as a privilege to the railroad, that the municipal corporations along its route might subscribe to its bonds, it is submitted that the furtherance of truth, equity, and justice demands that such a decision should not have a retroactive effect, and that obligations which have been entered into in good faith, in reliance upon the decision of the Supreme Court of Texas and of its Legislatere, should not be upset in consequence of such a view of the Legislative power. It is too late now for the City of San Antonio, after seventeen years' acquiescence in the power of the Legislature to allow it to subscribe for this stock, after it has received the stock and issued the bonds, and third parties' rights have been built up upon them, to come forward and say that there never was any law authorizing it to issue the bonds, although it may be that *an estoppel in pais* is not raised by the facts in favor of the city. Thus in *Brigham* vs. *Miller*, the Supreme Court of Ohio, in refusing to declare marriages void which were alleged to have been unconstitutionally contracted, said: "We have done enough to vindicate the Constitution, and we believe that the evil will cease." In Illinois a similar principle was applied to the creation of railroad corporations. The court said it was "too late to make the objection, property had been invested upon the action of the Legislature."

Johnson *vs.* Joliet County, 23d Illinois, page 207.
Cohens *vs.* Virginia, 6th Wheaton, 418.
Clark *vs.* Mowry, 5th Mich. Reps., 468.

It is submitted that while for the future the Supreme Court of Texas may place the construction upon its constitution, it cannot make void obligations which by a former decision it had declared to be valid. When such consequences occur the rule must be strictly limited to the future.

The past cannot be recalled. The subject matter and the parties to the former judicial decision cannot be reached by the latter one; and it is but just that persons occupying the same relations should be under the same protection.

In the case of Rowan *v.* Runnells, decided in 1847 in this Court, 5 Howard, 134, Chief Justice Taney says: "Undoubtedly this court will always feel bound to regard the decisions of the State courts, and from *the time they are made* will regard them as conclusive. But we ought not to give them a retroactive effect, and allow them to render invalid contracts entered into with citizens of other States, which in the judgment of this court were lawfully made."

In Pease *v.* Peck, 18 Howard, 595, it appeared that by an error the printer had omitted from a statute of Missouri the words, "beyond seas." The State court some years after decided that the act as published was invalid. This court refused to follow it, on the ground that the other view had become the basis of contracts.

But the cases in which this principle has been applied are so numerous that I will refrain from stating any more, but content myself with a simple citation of some of them.

State B'k *v.* Knoop, 16 How., 69.
Trust Co. *v.* Debolt, 16 How., 432.
Pease *v.* Peck, 18 How., 595.
Dodge *v.* Woolsey, 16 How., 380.
State B'k *v.* Knoop, 1 Blk, 436.
Butts *v.* Muscatine, 8 Wall, 575.
Atty-General *v.* Tudor Co., 104 Mass., 239.
Slee *v.* Bloom, 5 Johns, 366.
S. C., 19 Johns, 456.
Ward *v.* Sea Island Co., 7 Paige, 294.
San Antonio *v.* Jones, 28 Texas, 32.

I am indebted for a large part of these authorities and of my argument to an opinion of the late Judge Emmons published in Bench and Bar, vol. 1 (N. S.), 50.

Fifth Point.

The other defences raised by the pleadings have been disposed of by the decision of the judge below, or have been abandoned.

The *bona fides* of the title of the plaintiff below; the issue of the bonds for a valuable consideration, are both of necessity involved in the decision of facts by the judge below which cannot be reviewed here.

So, too, the existence of the railroad company as a corporate body at the time of the issue of the bonds is involved in the decision as a question of fact; but if it were not, it is well settled that *non user* does not of itself produce disfranchisement, but is only a cause for it. The corporation remains alive until decreed to be defunct by a judgment of a competent tribunal.

The want of a seal to the bonds was also disposed of by the court below upon the plea of *non est factum*. It it be open to review here, it is only necessary to say that the contract was one which might have been made without a seal. In effect, it was no more than a promissory note payable to bearer; and it makes no difference in such an instrument whether it be for one year or twenty.

The corporation could make any contract without a seal which an individual could. After having issued the bonds and received the stock of the railroad company, and held it for twenty years, the City is equitably estopped from saying it cannot be bound without a seal.

Pendleton *v.* Ames, 13 Wall., 297.
Board of Education *v.* Greenbaum, 39 Ills., 609
Rose *v.* Madison, 1 Ind., 281.
Merrick *v.* Burlington, 11 Iowa, 74.
Petrie *v.* Wright, 14 Miss., 647.
Kyd on Corp., 263.
Bk. of U. S. *v.* Dandridge, 12 Wheat, 105.
Dillon on Mer. Corp., § 132.

Sixth Point.

The principles adopted by this court in the case of Gelpcke *v.* Dubuque, and since then unswervingly adhered to, have received the admiration—nay, the homage—of mankind. Truth, equity, justice have been vindicated, and the spirit of the law, which giveth life, has been exalted over that letter thereof which killeth.

Under the light of these principles there was no error committed in the trial below, and the writ here should be dismissed.

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In the Supreme Court

OF THE UNITED STATES.

THE CITY OF SAN ANTONIO, Plff. in Error, vs. J. C. BARNES, Deft. in Error.	No. 245.

[*In the dictation of the original brief for defendant in error, hurriedly prepared for the first expected hearing of this argument, a few mistakes are to be found in the statement of the case. These were induced by that given in the court below, rendered in the first instance on the case of Mehaffey, also on writ of error to this court, and on the calendar as No. 244.*

In that case the suit was on two bonds, &c.; in this on 180 *coupons. The evidences of the original indebtedness are spoken of as bonds in the brief, following the language employed in the opinion below. This is in accordance with their popular designation. They are, perhaps, more precisely to be viewed as certificates*].

Supplemental Brief.

For Defendant in Error, in reply to the Points in additional Brief for Plaintiff in Error in No. 244, and so far as they relate to No. 245.

I.

The jurisdiction of the Court below, because of change of citizenship, is not ousted.

(*a.*) In consequence of assignment without assent of plaintiff in error, of its bonds or certificates (viewed as choses in action), on their face payable to bearer.

Story on Contracts, § 444.

1. The rule governing an instrument evidencing a debt bearing interest, applies to such interest as an incident of the debt, or any evidence thereof. '*Accessorium sequitur principale suum.*'

Railroad Co. *vs.* Co. of Otoe, 16 Wall, 667. (case where coupons were detached).

(*b.*) The express language of the decision cited baffles its attempted application. "A note so payable to bearer, is payable to anybody, and is not affected by the *disabilities* of the *nominal payee.*"

Bank of Kentucky *vs.* Wistar, 2 Peters, p. 326.

II.

[As the Error Book (p. 29, marginal) shows, that by written stipulation "the issues of fact as well as of law" were submitted to the Circuit Judge, it is difficult to see on what grounds the plaintiff in error hopes for a review of the matters adjudicated in the court below.

Campbell *vs.* Boirean, 21 How., 223.
U. S. *vs.* Smith, 4 Otto, p. 218.

An apology seems to be needed, in following the several steps in an argument which seeks to get behind the judgment by recourse (as in the one last noted on jurisdiction) to constitutional or quasi-constitutional principles.]

The issuance of these bonds or Certificates carries with it no attribute, such as pertains to the act or position of a sovereign State.

(*a.*) The Act of the Legislature conferring a specific power on the plaintiff in error, did not clothe the act to be done under such power, with any semblance of sovereignty as such.

(*b.*) The analogy sought between the certificates of indebtedness so issued by plaintiff in error, and a government bond, is barren of the legal inference sought, even if the principal debt were expressed as *redeemable*, instead of *payable*.

(*c.*) It was not necessary for the plaintiff in error, in order to effectuate the delivery of the certificates, to execute, by its chief fiscal officer, a power of attorney, authorizing the bearer of a certificate to receive its principal or interest, or any amount due thereon, as from a foreign State or government, in the point taken, which so grossly distorts the quoted language of Ch. J. Taney, in Bank of U. S. *vs.* U. S., 2 How., 755.

(*d.*) Any reissue by the plaintiff in error, not being alleged or proved, such imagined act might be, if a supposed original issue had been paid, *ultra vires*, but not within the rule in the case cited (Mayor *vs.* Ray, 19 Wall., 468), where issuance by the City of Nashville of its promises to pay was held to have been done in the absence of a grant of the requisite constituting power of the Legislature.

III.

The doctrine of ultra vires seeks in the fourth and sixth points of additional brief, shelter under or alliance with

(1) Rules applied in cases of dissolved corporations, and

(2) The doctrines of civil law on pupilage.

(*a.*) If the plaintiff in error was not existent, as a legal entity, the rule gleaned from 8 Peters, 281–7, might have place in this argument.

(*b.*) The act of the plaintiff in error, under the power conferred by a sovereign authority, became *sui*, and was not *alieni juris*. The power authorized it to issue bonds, bearing interest, or OTHERWISE to *pledge* its *faith* to pay for the stock it subscribed for, and was exercised under the latter, (and in form approximating the former) alternative, yet without seal. The certificates issued were in no legimate use of the terms "bills of credit," or "negotiable securities passing as money" (p. 19 of additional brief), or "money tokens" (p. 20). Neither were they like the debentures in the case (L. R., III, 355), which—as issued by the Natal Company to a vendor (of land to it), his executors, administrators, or *transferees*—Lord Cairns held were choses in action, subject to equities between the company and the vendor, as in the case of an assign by deed, though by the substitution of the term "transferees" the assignment might pass without deed.

IV.

The eighth point of additional brief may justify a brief enforcement of the views submitted on behalf of defendant in error in the original brief, which treated mostly of the reasons for constitutional inhibitions having reference to local bills.

The Constitution of Texas presents the inhibition in its most comprehensive form, applicable to statutes of a general as well as of a private or local character; and the conclusion is imminent:

(*a.*) That to save a general statute, the term "object" in the clause of the Constitution must be held to cover everything needed to give the statute effect, whether of the primary end evidently sought, or of such as might be of a subsidiary nature, and requisite to give efficiency to any precedent enactments in the statute.

(*b.*) The same rule being concurrent, *ex vi termini*, in the interpretation of a local statute for the incorporation of a company, and, *a fortiori*, of one for the construction and use of a railroad (now treated in all tribunals in this country as a public improvement, and not classed with private affairs, as per Sharpless *vs.* Philadelphia, 21 Penn., 147, and Olcott *vs.* The Supervisors, 16 Wall, 678), any provision for the payment of a debt authorized to be contracted, would be within the generic range of the *object* of the incorporation.

(*c.*) The status of the plaintiff in error, under such a law, is wholly diverse from that (relied on by it) of the City of Nashville, which had no adequate power conferred on it, to issue securities of a commercial character free from equitable defences.

V.

The Ninth Point (Additional Brief) needs only to show its irrelevancy to the case cited in L. R. Chan. Div'n IV., 37.

The decision *in re* European Central Railway Company simply rested on the allowance of interest as by the contract at six per cent, until judgment rendered, and after that, under the Judgment Act, at four per cent. The forbearance given in the enforcement of the judgment, was held to be no reason for the judgment creditor receiving the extra two per cent. asked for.

VI.

The other points (additional brief, &c.) furnish no adequate subject for notice.

VII.

The following considerations are submitted in support of the main propositions of law taken, and conclusions of fact reached in the very lucid and forcible opinion rendered by the court below.

1. When power has been conferred upon a municipal corporation to issue bonds, *certificates, or other forms of indebtedness*, payable to bearer, these become stamped with the characteristics of bills of exchange, under the law merchant; that is to say, they are in fact and in law negotiable and

pass from hand to hand without leaving any equities behind them, in the same manner as bills of exchange do, under the law merchant. The possession of them imports *prima facie*, that he who possesses them is a *bona fide* holder, for value at maturity, without any notice of any defects in the instrument he holds, or defences to them; this presumption is of the nature of proof to overcome; and the issue having been joined upon the question of *bona fides*, and having been found in favor of the defendant in error by the court below, there is no power in this court to review it. Unless there is some question of law involved in the decision where the judge has committed an error of law, it cannot be reviewed upon a writ of error in this court.

2. The power of the Legislature to confer upon a municipal corporation, the right to subscribe for the stock of a railroad company, and to issue in payment therefor, bonds or certificates of indebtedness payable to bearer, with coupons attached, has been so often passed upon by the courts of last resort in all the States, and by this court, that to assume now to treat the question as an open one, as is done in the brief of counsel for the plaintiff in error, is in total disregard of the salutary doctrine of *stare decisis*, and if followed in other cases would unsettle all, that a long roll of judicial decisions has now made tolerably certain.

In the *latest reported decision* by the New York Court of Appeals, made since the inhibitory amendment to the State Constitution, the court say of the case, decided in 1856, under one of the earliest acts on the subject of municipal bonding in aid of railroad enterprises: "That it cannot at this time, "without doing the greatest injustice, overrule the "Bank of Rome *vs.* the village of Rome. The